110TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 110–241

OVERSEAS PRIVATE INVESTMENT CORPORATION REAUTHORIZATION ACT OF 2007

JULY 19, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. LANTOS, from the Committee on Foreign Affairs, submitted the following

R E P O R T

[To accompany H.R. 2798]

[Including cost estimate of the Congressional Budget Office]

The Committee on Foreign Affairs, to whom was referred the bill (H.R. 2798) to reauthorize the programs of the Overseas Private Investment Corporation, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

TABLE OF CONTENTS

59–006

THE AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Overseas Private Investment Corporation Reauthorization Act of 2007".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Since its founding in 1971, the Overseas Private Investment Corporation (in this section referred to as "OPIC") has helped to mobilize and facilitate private capital by United States investors in developing and emerging market countries in support of United States foreign policy and development goals.

(2) OPIC assistance should not, in any way, support projects in countries that reject their obligations to support international peace, security, and basic human rights.

(3) OPIC assistance should not be provided to those who support enemies of the United States.

(4) OPIC assistance is a privilege and should be granted to persons that, along with their affiliated companies, demonstrate responsible and sustainable business practices, particularly with regard to the environment, international worker rights, and efforts against genocide and nuclear proliferation. Denial of OPIC assistance is not a penalty or sanction.

(5) Over OPIC's 35-year history, OPIC has supported $177,000,000,000 in operating investments in more than 150 developing countries, helping to create more than 800,000 jobs and some $13,000,000,000 in host-government revenues.

(6) OPIC projects have generated $71,000,000,000 in United States exports and supported more than 271,000 United States jobs.

(7) Projects assisted by OPIC in fiscal year 2006 are projected to generate $1,000,000,000 in United States exports, support more than 2,700 United States jobs, and have a positive impact on the United States balance of payments.

(8) In fiscal year 2006, 87 percent of all OPIC-supported projects supported small-and-medium-sized businesses in the United States.

(9) In an era of limited Federal budgetary resources, OPIC has consistently demonstrated an ability to operate on a self-sustaining basis to support United States companies, all at a net cost of zero to the United States taxpayer.

(10) OPIC has reserves totaling approximately $5,300,000,000 and will make an estimated net budget contribution to the international affairs account of $159,000,000 in fiscal year 2008.

SEC. 3. REAUTHORIZATION OF OPIC PROGRAMS.

Section 235(a)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(a)(2)) is amended by striking "September 30, 2007" and inserting "September 30, 2011" .

SEC. 4. PREFERENTIAL CONSIDERATION OF CERTAIN INVESTMENT PROJECTS.

Section 231(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2191(f)) is amended to read as follows:

"(f) to give preferential consideration to investment projects in less developed countries the governments of which are receptive to private enterprise, domestic and foreign, and to projects in countries the governments of which are willing and able to maintain conditions that enable private enterprise to make its full contribution to the development process;".

SEC. 5. REQUIREMENTS REGARDING INTERNATIONAL WORKER RIGHTS.

(a) COUNTRY REQUIREMENTS.—Subsection (a) of section 231A of the Foreign Assistance Act of 1961 (22 U.S.C. 2191a(a)) is amended—

(1) by amending the subsection heading to read as follows: "INTERNATIONAL WORKER RIGHTS";

(2) in paragraph (4), by striking "(4) In" and inserting "(5) ADDITIONAL DETERMINATION.—In" ; and

(3) by striking paragraphs (1) through (3) and inserting the following:

"(1) LIMITATION ON OPIC ACTIVITIES.—(A) The Corporation may insure, reinsure, guarantee, or finance a project only if the country in which the project is to be undertaken has made or is making significant progress towards the recognition, adoption, and implementation of laws that substantially provide international worker rights, including in any designated zone, or special administrative region or area, in that country.

"(B) The Corporation shall also include the following language, in substantially the following form, in all contracts which the Corporation enters into with eligible investors to provide financial support under this title:

"'The investor agrees not to take any actions to obstruct or prevent employees of the foreign enterprise from exercising their international worker rights (as defined in section 238(h) of the Foreign Assistance Act of 1961), and agrees to adhere to the obligations regarding those international worker rights.'

"(2) PREFERENCE TO CERTAIN COUNTRIES.—To the degree possible and consistent with its development objectives, the Corporation shall give preferential consideration to projects in countries that have adopted, maintain, and enforce laws that substantially provide international worker rights.

"(3) USE OF ANNUAL REPORTS ON INTERNATIONAL WORKER RIGHTS.—The Corporation shall, in carrying out paragraph (1)(A), use, among other sources, the reports submitted to the Congress pursuant to section 504 of the Trade Act of 1974. Such other sources include the observations, reports, and recommendations of the International Labor Organization, and other relevant organizations.

"(4) INAPPLICABILITY TO HUMANITARIAN ACTIVITIES.—Paragraph (1) shall not prohibit the Corporation from providing any insurance, reinsurance, guaranty, financing, or other assistance for the provision of humanitarian assistance in a country.".

(b) BOARD OF DIRECTORS.—Section 233(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2193(b)) is amended by adding at the end the following: "The selection of the small business, organized labor, and cooperative directors should be made, respectively, in consultation with relevant representative organizations.".

(c) DEFINITIONS.—Section 238 of the Foreign Assistance Act of 1961 (22 U.S.C. 2198) is amended—

(1) in subsection (f), by striking "and" after the semicolon;

(2) in subsection (g), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(h) the term 'international worker rights' means—

"(1) internationally recognized worker rights, as defined in section 507(4) of the Trade Act of 1974 (19 U.S.C. 2467(4)); and

"(2) the elimination of discrimination with respect to employment and occupation.".

(d) GENERAL PROVISIONS AND POWERS.—Section 239 of the Foreign Assistance Act of 1961 (22 U.S.C. 2199) is amended—

(1) in subsection (h), by adding at the end the following: "In addition, the Corporation should consult with relevant stakeholders in developing such criteria."; and

(2) in subsection (i), in the first sentence, by inserting ", including international worker rights," after "fundamental freedoms".

SEC. 6. ENVIRONMENTAL ASSESSMENTS.

Section 231A(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2191a(b)) is amended to read as follows:

"(b) ENVIRONMENTAL IMPACT.—The Board of Directors of the Corporation shall not vote in favor of any action proposed to be taken by the Corporation that is likely to have significant adverse environmental impacts, unless for at least 60 days before the date of the vote—

"(1) an environmental impact assessment, or initial environmental audit, analyzing the environmental impacts of the proposed action and of alternatives to the proposed action has been completed by the project applicant and made available to the Board of Directors; and

"(2) such assessment or audit has been made available to the public of the United States, locally affected groups in the host country, and host country nongovernmental organizations.".

SEC. 7. COMMUNITY SUPPORT.

Section 237 of the Foreign Assistance Act of 1961 (22 U.S.C. 2197) is amended by adding at the end the following:

"(p) COMMUNITY SUPPORT.—To the maximum extent practicable, the Corporation shall require the applicant for a project that is subject to section 231A(b) to obtain broad community support for the project.".

SEC. 8. CLIMATE CHANGE MITIGATION ACTION PLAN.

Title IV of chapter 2 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.) is amended by inserting after section 234A the following new section:

"SEC. 234B. CLIMATE CHANGE MITIGATION.

"(a) MITIGATION ACTION PLAN.—The Corporation shall, not later than 180 days after the date of the enactment of the Overseas Private Investment Corporation Reauthorization Act of 2007, institute a climate change mitigation action plan that includes the following:

"(1) CLEAN AND EFFICIENT ENERGY TECHNOLOGY.—

"(A) INCREASING ASSISTANCE.—The Corporation shall establish a goal of substantially increasing its support of projects that use, develop, or otherwise promote the use of clean energy technologies over the 4-year period beginning on the date of the enactment of the Overseas Private Investment Corporation Reauthorization Act of 2007.

"(B) PREFERENTIAL TREATMENT TO PROJECTS.—The Corporation shall give preferential treatment to the evaluation and awarding of assistance for and provide greater flexibility in supporting projects that use, develop, or otherwise promote the use of clean and efficient energy technologies.

"(2) ENVIRONMENTAL IMPACT ASSESSMENTS.—

"(A) GREENHOUSE GAS EMISSIONS.—The Corporation shall, in making an environmental impact assessment for a project under section 231A(b), take into account the degree to which the project contributes to the emission of greenhouse gases.

"(B) OTHER DUTIES NOT AFFECTED.—The requirement under subparagraph (A) is in addition to any other requirement, obligation, or duty that the Corporation has.

"(3) REPORT TO CONGRESSIONAL COMMITTEES.—The Corporation shall, within 180 days after the date of the enactment of the Overseas Private Investment Corporation Reauthorization Act of 2007, submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report on the plan developed to carry out paragraph (1)(A). Thereafter, the Corporation shall include in its annual report under section 240A a discussion of such plan and its implementation.

"(b) EXTRACTION INVESTMENTS.—

"(1) PRIOR NOTIFICATION TO CONGRESSIONAL COMMITTEES.—The Corporation may not approve any contract of insurance or reinsurance, or any guaranty, or enter into any agreement to provide financing for any project which significantly involves an extractive industry and in which assistance by the Corporation would be valued at $10,000,000 or more (including contingent liability), until at least 30 days after the Corporation notifies the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate of such contract or agreement.

"(2) COMMITMENT TO EITI PRINCIPLES.—The Corporation may approve a contract of insurance or reinsurance, or any guaranty, or enter into an agreement to provide financing to an eligible investor for a project that significantly involves an extractive industry only if—

"(A) the eligible investor has agreed to implement the Extractive Industries Transparency Initiative principles and criteria, or substantially similar principles and criteria; or

"(B) the host country where the project is to be carried out has committed to the Extractive Industries Transparency Initiative principles and criteria, or substantially similar principles and criteria.

"(3) PREFERENCE FOR CERTAIN PROJECTS.—With respect to all projects that significantly involve an extractive industry, the Corporation, to the degree possible and consistent with its development objectives, shall give preference to a project in which both the eligible investor has agreed to implement the Extractive Industries Transparency Initiative principles and criteria, or substantially similar principles and criteria, and the host country where the project is to be carried out has committed to the Extractive Industries Transparency Initiative principles and criteria, or substantially similar principles and criteria.

"(4) DEFINITIONS.—In this subsection:

"(A) EXTRACTIVE INDUSTRY.—The term 'extractive industry' refers to an enterprise engaged in the exploration, development, or extraction of oil and gas reserves, metal ores, gemstones, industrial minerals, or coal.

"(B) EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE PRINCIPLES AND CRITERIA.—The term 'Extractive Industries Transparency Initiative principles and criteria' means the principles and criteria of the Extractive Industries Transparency Initiative, as set forth in Annex A to the Anti-Corruption Policies and Strategies Handbook of the Corporation, as published in September 2006.

"(5) REPORTING REQUIREMENT.—The Corporation shall include in its annual report required under section 240A a description of its activities to carry out this subsection.

"(c) DEFINITIONS.—In this section:

"(1) CLEAN AND EFFICIENT ENERGY TECHNOLOGY.—The term 'clean and efficient energy technology' means an energy supply or end-use technology—

"(A) such as—

"(i) solar technology;

"(ii) wind technology;

"(iii) geothermal technology;

"(iv) hydroelectric technology; and

"(v) carbon capture technology; and

"(B) that, over its life cycle and compared to a similar technology already in commercial use—

"(i) is reliable, affordable, economically viable, socially acceptable, and compatible with the needs and norms of the country involved;

"(ii) results in—

"(I) reduced emissions of greenhouse gases; or

"(II) increased geological sequestration; and

"(iii) may—

"(I) substantially lower emissions of air pollutants; or

"(II) generate substantially smaller and less hazardous quantities of solid or liquid waste.

"(2) GREENHOUSE GAS.—The term 'greenhouse gas' means—

"(A) carbon dioxide;

"(B) methane;

"(C) nitrous oxide;

"(D) hydrofluorocarbons;

"(E) perfluorocarbons; or

"(F) sulfur hexafluoride.".

SEC. 9. PROHIBITION ON ASSISTANCE TO DEVELOP OR PROMOTE CERTAIN RAILWAY CONNECTIONS AND RAILWAY-RELATED CONNECTIONS.

Section 237 of the of the Foreign Assistance Act of 1961 (22 U.S.C. 2197) is further amended by adding at the end the following:

"(q) PROHIBITION ON ASSISTANCE FOR CERTAIN RAILWAY PROJECTS.—The Corporation may not provide insurance, reinsurance, a guaranty, financing, or other assistance to support the development or promotion of any railway connection or railway-related connection that does not traverse or connect with Armenia and does connect Azerbaijan and Turkey.".

SEC. 10. INELIGIBILITY OF PERSONS DOING CERTAIN BUSINESS WITH STATE SPONSORS OF TERRORISM.

(a) IN GENERAL.—Section 237 of the Foreign Assistance Act of 1961 (22 U.S.C. 2197) is further amended by adding at the end the following:

"(r) INELIGIBLE PROJECTS.—

"(1) IN GENERAL.—A project will not be eligible to receive support provided by the Corporation under this title if either of the following applies:

"(A)(i) An applicant for insurance, reinsurance, financing, or other support for a project provided to the government of a state sponsor of terrorism a loan, or an extension of credit, that remains outstanding.

"(ii) For purposes of this subparagraph, the sale of goods, other than food or medicine, on any terms other than a cash basis shall be considered to be an extension of credit.

"(B) An applicant for insurance, reinsurance, financing, or other support for a project has an investment commitment valued at $20,000,000 or more for the energy sector in a country that is a state sponsor of terrorism.

"(2) DEFINITIONS.—In this subsection:

"(A) CASH BASIS.—The term 'cash basis' refers to a sale in which the purchaser of goods or services is required to make payment in full within 45 days after receiving the goods or services.

"(B) ENERGY SECTOR.—The term 'energy sector' refers to activities to develop or transport petroleum or natural gas resources.

"(C) INVESTMENT COMMITMENT.—The term 'investment commitment' means any of the following activities if such activity is undertaken pursuant to a commitment, or pursuant to the exercise of rights under a commitment, that was entered into with the government of a state sponsor of terrorism or a nongovernmental entity in a country that is a state sponsor of terrorism:

"(i) The entry into a contract that includes responsibility for the development of petroleum resources located in a country that is a state sponsor of terrorism, or the entry into a contract providing for the general supervision and guarantee of another person's performance of such a contract.

"(ii) The purchase of a share of ownership, including an equity interest, in that development.

"(iii) The entry into a contract providing for the participation in royalties, earnings, or profits in that development, without regard to the form of the participation.

"(D) STATE SPONSOR OF TERRORISM.—The term 'state sponsor of terrorism' means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979, section 620A of the Foreign Assistance Act of 1961, section 40 of the Arms Export Control Act, or any other provision of law, to be a government that has repeatedly provided support for acts of international terrorism.

"(3) CERTIFICATION.—

"(A) BY APPLICANTS.—A person or entity applying for insurance, reinsurance, a guaranty, financing, or other assistance under this title may not receive such support unless its chief executive officer certifies to the Corporation, under penalty of perjury, that the person or entity and its majority-owned subsidiaries are not engaged in any activity described in subparagraph (A) or (B) of paragraph (1).

"(B) BY ULTIMATE PARENT ENTITIES.—In the case of an applicant that is a majority-owned entity of another entity, in addition to the certification under subparagraph (A), the chief executive officer of the ultimate parent entity of the applicant must certify, under penalty of perjury, that it and its majority-owned subsidiaries are not engaged in any activity described in subparagraph (A) or (B) of paragraph (1).

"(C) APPLICATION TO STRAW MAN TRANSACTIONS.—In any case in which—

"(i) an applicant for insurance, reinsurance, financing, or other assistance under this title is providing goods and services to a project,

"(ii) more than 50 percent of such goods and services are acquired from an unaffiliated entity, and

"(iii) the unaffiliated entity is receiving $20,000,000 or more, or sums greater than 50 percent of the amount of the assistance provided by the Corporation for the project (including contingent liability), for such goods or services,

then the chief executive officer of the unaffiliated entity must make a certification under subparagraph (A), and any ultimate parent entity must make a certification required by subparagraph (B).

"(D) DILIGENT INQUIRY.—A certification required by subparagraph (A), (B), or (C) may be made to the best knowledge and belief of the certifying officer if that officer states that he or she has made diligent inquiry into the matter certified.

"(E) EXCEPTION.—(i) A chief executive officer of an applicant or other entity may provide a certification required by subparagraph (A), (B), or (C) with respect to the activity of a majority-owned subsidiary or entity notwithstanding activity by such majority-owned subsidiary or entity that would cause a project to be ineligible for support under subparagraph (A) or (B) of paragraph (1) if such activity is carried out under a contract or other obligation of such majority-owned subsidiary or entity that was entered into or incurred before the acquisition of such majority-owned subsidiary or entity by the applicant or ultimate parent entity.

"(ii) Clause (i) shall not apply if the terms of such contract or other obligation are expanded or extended after such acquisition.

"(F) DEFINITION.—For purposes of this paragraph, a person is an ultimate parent of an entity if the person owns directly, or through majority ownership of other entities, greater than 50 percent of the equity of the entity.

"(4) EXCEPTION.—The prohibition in paragraph (1) shall not—

"(A) apply to a loan, extension of credit, or investment commitment by an applicant, or other entity covered by a certification under subparagraph (A), (B), or (C) of paragraph (3), in Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, or Abyei, Darfur, if the Corporation, with the concurrence of the Secretary of State, determines that such loan, extension of credit, or investment commitment will provide emergency relief, promote economic self-sufficiency, or implement a nonmilitary program in support of a viable peace agreement in Sudan, including the Com-

prehensive Peace Agreement for Sudan and the Darfur Peace Agreement; or

"(B) prohibit the Corporation from providing support for projects in Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, and Abyei, Darfur, if the Corporation, with the concurrence of the Secretary of State, determines that such projects will provide emergency relief, promote economic self-sufficiency, or implement a nonmilitary program in support of a viable peace agreement in Sudan, including the Comprehensive Peace Agreement for Sudan and the Darfur Peace Agreement .

"(5) PROSPECTIVE APPLICATION OF SUBSECTION.—This subsection shall not be applied to limit support by the Corporation under this title because an applicant, or other entity covered by a certification under subparagraph (A), (B), or (C) of paragraph (3) engaged in commercial activity specifically licensed by the Office of Foreign Assets Control of the Department of the Treasury.".

(b) TERMINATION.—

(1) IN GENERAL.—The amendment made by this section shall cease to be effective with respect to a country that is a state sponsor of terrorism 30 days after the President certifies to the appropriate congressional committees that—

(A) the country has ceased providing support for acts of international terrorism and no longer satisfies the requirements for designation as a state sponsor of terrorism;

(B) the country does not possess nuclear weapons or a significant program to develop nuclear weapons; and

(C) the country is not committing genocide or conducting a program of ethnic cleansing against a civilian population that approaches genocide.

(2) DEFINITIONS.—In this subsection:

(A) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

(B) STATE SPONSOR OF TERRORISM.—The term "state sponsor of terrorism" has the meaning given that term in section 237(r)(2)(D) of the Foreign Assistance Act of 1961, as added by subsection (a) of this section.

SEC. 11. INCREASED TRANSPARENCY.

(a) IN GENERAL.—Section 237 of the Foreign Assistance Act of 1961 (22 U.S.C. 2197) is further amended by adding at the end the following new subsections:

"(s) AVAILABILITY OF PROJECT INFORMATION.—Beginning 90 days after the date of the enactment of the Overseas Private Investment Corporation Reauthorization Act of 2007, the Corporation shall make public, and post on its Internet website, summaries of all new projects supported by the Corporation, and other relevant information, except that the Corporation shall not include any confidential business information in the summaries and information made available under this subsection.

"(t) REVIEW OF METHODOLOGY.—Not later than 180 days after the date of the enactment of the Overseas Private Investment Corporation Reauthorization Act of 2007, the Corporation shall publish in the Federal Register and periodically revise, subject to a period of public comment, the detailed methodology, including relevant regulations, used to assess and monitor the impact of projects supported by the Corporation on the development and environment of, and international worker rights in, host countries, and on United States employment.

"(u) PUBLIC NOTICE PRIOR TO PROJECT APPROVAL.—

"(1) PUBLIC NOTICE.—The Board of Directors of the Corporation may not vote in favor of any action proposed to be taken by the Corporation on any Category A project until at least 60 days after the Corporation—

"(A) makes available for public comment a summary of the project and relevant information about the project; and

"(B) makes the summary and information described in paragraph (1) available to locally affected groups in the area of impact of the proposed project, and to host country nongovernmental organizations.

The Corporation shall not include any business confidential information in the summary and information made available under subparagraphs (A) and (B).

"(2) PUBLISHED RESPONSE.—To the extent practicable, the Corporation shall publish responses to the comments received under paragraph (1) with respect to a Category A project and submit the responses to the Board not later than 7 days before a vote is to be taken on any action proposed by the Corporation on the project.

"(3) DEFINITIONS.—In this subsection, the term 'Category A project' means any project or other activity for which the Corporation proposes to provide in-

surance, reinsurance, financing, or other support under this title and which is likely to have significant adverse environmental impacts.".

(b) OFFICE OF ACCOUNTABILITY.—Section 237 of the Foreign Assistance Act of 1961 (22 U.S.C. 2197) is further amended by adding at the end the following new subsection:

"(v) OFFICE OF ACCOUNTABILITY.—The Corporation shall maintain an Office of Accountability to provide problem-solving services for projects supported by the Corporation and to review the Corporation's compliance with its environmental, social, worker rights, human rights, and transparency policies and procedures, to the maximum extent practicable. The Office of Accountability shall operate in a manner that is fair, objective and transparent.".

SEC. 12. FRAUD AND OTHER BREACHES OF CONTRACT.

Section 237(n) of the Foreign Assistance Act of 1961 (22 U.S.C. 2197(n)) is amended—

(1) by striking "Whoever" and inserting:

"(1) IN GENERAL.—Whoever"; and

(2) by adding at the end the following:

"(2) DEFERRALS TO DEPARTMENT OF JUSTICE.—(A) The President of the Corporation shall refer to the Department of Justice for appropriate action information known to the Corporation concerning any substantial evidence of—

"(i) a violation of this title;

"(ii) a material breach of contract entered into with the Corporation by an eligible investor; or

"(iii) a material false representation made by an investor to the Corporation.

"(B) Subparagraph (A) does not apply if the President of the Corporation concludes that the matter described in clause (i), (ii), or (iii), as the case may be, of subparagraph (A)—

"(i) is not evidence of a possible violation of criminal law; and

"(ii) is not evidence that the Federal Government is entitled to civil remedy or to impose a civil penalty.".

SEC. 13. TRANSPARENCY AND ACCOUNTABILITY OF INVESTMENT FUNDS.

(a) IN GENERAL.—Section 239 of the Foreign Assistance Act of 1961 (22 U.S.C. 2199) is amended by adding at the end the following:

"(l) TRANSPARENCY AND ACCOUNTABILITY OF INVESTMENT FUNDS.—

"(1) COMPETITIVE SELECTION OF INVESTMENT FUND MANAGEMENT.—With respect to any investment fund that the Corporation creates on or after the date of the enactment of the Overseas Private Investment Corporation Reauthorization Act of 2007, the Corporation may select persons to manage the fund only by contract using full and open competitive procedures.

"(2) CRITERIA FOR SELECTION.—In assessing proposals for investment fund management proposals, the Corporation shall consider, in addition to other factors, the following:

"(A) The prospective fund management's experience, depth, and cohesiveness.

"(B) The prospective fund management's track record in investing risk capital in emerging markets.

"(C) The prospective fund management's experience, management record, and monitoring capabilities in its target countries, including details of local presence (directly or through local alliances).

"(D) The prospective fund management's experience as a fiduciary in managing institutional capital, meeting reporting requirements, and administration.

"(E) The prospective fund management's record in avoiding investments in companies that would be disqualified under section 237(r).

"(3) ANNUAL REPORT.—The Corporation shall include in each annual report under section 240A an analysis of the investment fund portfolio of the Corporation, including the following:

"(A) FUND PERFORMANCE.—An analysis of the aggregate financial performance of the investment fund portfolio grouped by region and maturity.

"(B) STATUS OF LOAN GUARANTIES.—The amount of guaranties committed by the Corporation to support investment funds, including the percentage of such amount that has been disbursed to the investment funds.

"(C) RISK RATINGS.—The definition of risk ratings, and the current aggregate risk ratings for the investment fund portfolio, including the number of investment funds in each of the Corporation's rating categories.

"(D) COMPETITIVE SELECTION OF INVESTMENT FUND MANAGEMENT.—The number of proposals received and evaluated for each newly established investment fund.".

(b) GAO AUDIT.—Not later than 1 year after the submission of the first report to Congress under section 240A of the Foreign Assistance Act of 1961 that includes the information required by section 239(l)(3) of that Act (as added by subsection (a) of this section), the Comptroller General of the United States shall prepare and submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate an independent assessment of the investment fund portfolio of the Overseas Private Investment Corporation, covering the items required to be addressed under such section 239(l)(3).

SEC. 14. EXTENSION OF AUTHORITY TO OPERATE IN IRAQ.

Section 239 of the Foreign Assistance Act of 1961 (22 U.S.C. 2199) is amended by adding at the end the following:

"(m) OPERATIONS IN IRAQ.—Notwithstanding subsections (a) and (b) of section 237, the Corporation is authorized to undertake in Iraq any program authorized by this title.".

SEC. 15. CONSISTENCY WITH EXISTING LAW.

Section 239 of the Foreign Assistance Act of 1961 (22 U.S.C. 2199) is further amended by adding at the end the following:

"(n) CONSISTENCY WITH OTHER LAW.—Section 620L of this Act shall apply to any insurance, reinsurance, guaranty, or other financing issued by the Corporation for projects in the West Bank and Gaza to the same extent as such section applies to other assistance under this Act.

"(o) LIMITATION ON ASSISTANCE TO GAZA AND THE WEST BANK .—The Corporation may not provide insurance, reinsurance, a guaranty, financing, or other assistance to support a project in any part of Gaza or the West Bank unless the Secretary of State determines that the location for the project is not under the effective control of Hamas or any other foreign terrorist organization designated under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).".

SEC. 16. CONGRESSIONAL NOTIFICATION REGARDING MAXIMUM CONTINGENT LIABILITY.

Section 239 of the Foreign Assistance Act of 1961 (22 U.S.C. 2199) is further amended by adding at the end the following:

"(p) CONGRESSIONAL NOTIFICATION OF INCREASE IN MAXIMUM CONTINGENT LIABILITY.—The Corporation shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate not later than 15 days after the date on which the Corporation's maximum contingent liability outstanding at any one time pursuant to insurance issued under section 234(a), and the amount of financing issued under sections 234(b) and (c), exceeds the previous fiscal year's maximum contingent liability by 25 percent.".

SEC. 17. ASSISTANCE FOR SMALL BUSINESSES AND ENTITIES.

Section 240 of the Foreign Assistance Act of 1961 (22 U.S.C. 2200) is amended by adding at the end the following:

"(c) RESOURCES DEDICATED TO SMALL BUSINESSES, COOPERATIVES, AND OTHER SMALL UNITED STATES INVESTORS.—The Corporation shall ensure that adequate personnel and resources, including senior officers, are dedicated to assist United States small businesses, cooperatives, and other small United States investors in obtaining insurance, reinsurance, financing, and other support under this title. The Corporation shall include, in each annual report under section 240A, the following information with respect to the period covered by the report:

"(1) A description of such personnel and resources.

"(2) The number of small businesses, cooperatives, and other small United States investors that received such insurance, reinsurance, financing, and other support, and the dollar value of such insurance, reinsurance, financing and other support.

"(3) A description of the projects for which such insurance, reinsurance, financing, and other support was provided.".

SEC. 18. TECHNICAL CORRECTIONS.

(a) PILOT EQUITY FINANCE PROGRAM.—Section 234 of the Foreign Assistance Act of 1961 (22 U.S.C. 2194) is amended—

(1) by striking subsection (g); and

(2) by redesignating subsection (h) as subsection (g).

(b) TRANSFER AUTHORITY.—Section 235 of the Foreign Assistance Act of 1961 (22 U.S.C. 2195) is amended—

(1) by striking subsection (e); and

(2) by redesignating subsection (f) as subsection (e).

(c) GUARANTY CONTRACT.—Section 237(j) of the Foreign Assistance Act of 1961 (22 U.S.C. 2197(j)) is amended by inserting "insurance, reinsurance, and" after "Each".

(d) TRANSFER OF PREDECESSOR PROGRAMS AND AUTHORITIES.—

(1) TRANSFER.—Section 239 of the Foreign Assistance Act of 1961 (22 U.S.C. 2199), as amended by the preceding provisions of this Act, is amended—

(A) by striking subsection (b); and

(B) by redesignating the subsections (c) through (p) as subsections (b) through (o), respectively.

(2) CONFORMING AMENDMENTS.—(A) Section 237(m)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2197(m)(1)) is amended by striking "239(g)" and inserting "239(f)".

(B) Section 240A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2200A(a)) is amended—

(i) in paragraph (1), by striking "239(h)" and inserting "239(g)"; and

(ii) in paragraph (2)(A), by striking "239(i)" and inserting "239(h)".

(C) Section 209(e)(16) of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (as enacted into law by section 1000(a)(7) of Public Law 106-113; 31 U.S.C. 1113 note) is amended by striking "239(c)" and "2199(c)" and inserting "239(b)" and "2199(b)", respectively.

(e) ADDITIONAL CLERICAL AMENDMENTS.—Section 234(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2194(b)) is amended by striking "235(a)(2)" and inserting "235(a)(1)".

SEC. 19. EFFECTIVE DATE.

(a) NEW APPLICATIONS.—This Act and the amendments made by this Act shall apply with respect to any application for insurance, reinsurance, a guaranty, financing, or other support under title IV of chapter 2 of part I of the Foreign Assistance Act of 1961 if the application is received by the Overseas Private Investment Corporation on or after July 1, 2007, and the application is approved by the Corporation on or after the date of the enactment of this Act.

(b) EXTENSIONS AND RENEWALS.—

(1) IN GENERAL.—Subject to paragraph (2), this Act and the amendments made by this Act shall apply with respect to any extension or renewal of a contract or agreement for any such insurance, reinsurance, guaranty, financing, or support that was entered into by the Corporation before the date of the enactment of this Act if the extension or renewal is approved by the Corporation on or after such date of enactment.

(2) EXCEPTION.—This Act and the amendments made by this Act shall not apply to any extension or renewal which is substantially identical to an extension or renewal formally requested in a detailed writing filed with the Corporation before July 1, 2007.

SUMMARY

H.R. 2798, the Overseas Private Investment Corporation Reauthorization Act of 2007, was referred to the Committee on Foreign Affairs on June 20, 2007, and was subsequently referred to the Subcommittee on Terrorism, Nonproliferation, and Trade. On June 21, 2007, the Subcommittee on Terrorism, Nonproliferation, and Trade adopted an amendment in the nature of a substitute, and the bill was reported favorably, as amended, to the Committee on Foreign Affairs by a vote of 6–2. On June 26, 2007, during the full committee markup, the Committee on Foreign Affairs reported the bill favorably, as amended, by a vote of 23–5, with one voting "present."

BACKGROUND AND PURPOSE FOR THE LEGISLATION

The Overseas Private Investment Corporation (OPIC) was established as an agency of the United States in 1971. OPIC's mandate is to mobilize and facilitate the participation of United States private capital and skills in the economic and social development of less developed countries, thereby complementing the development assistance objectives of the United States. OPIC provides political

risk insurance, project financing, and other financial assistance to U.S. companies in support of these objectives. Over the agency's 35-year history, OPIC has supported $177,000,000,000 in assistance in more than 150 developing countries, helping to create more than 800,000 jobs and some $13,000,000,000 in host-government revenues. OPIC operates on a self-sustaining basis, at a net cost of zero to U.S. taxpayers.

H.R. 2798, the "Overseas Private Investment Corporation Reauthorization Act of 2007" reauthorizes OPIC through September 30, 2011, while strengthening the agency's development mandate and ensuring that OPIC activities are consistent with United States foreign policy objectives. The bill has many important aspects, including: (1) strengthening the rights of workers overseas; (2) requiring OPIC to institute a climate change mitigation action plan to increase the Corporation's support of projects that use and promote the use of clean energy technology; and (3) discouraging private sector investment with enemies of the United States by prohibiting the Corporation from supporting applicants of OPIC assistance that have certain ties to state sponsors of terrorism.

HEARINGS

The Subcommittee on Terrorism, Nonproliferation, and Trade held a hearing entitled "The Reauthorization of OPIC" on May 24, 2007. The Subcommittee heard testimony from Robert Mosbacher, Jr., President and Chief Executive Officer of the Overseas Private Investment Corporation; Jeff Vogt of the AFL–CIO; Jonathan Sohn of the World Resources Institute; Frank J. Gaffney, Jr. of the Center for Security Policy; and Dr. Tim Kane of The Heritage Foundation.

COMMITTEE CONSIDERATION

On June 26, 2007, the Committee held a markup and H.R. 2798 was reported favorably to the House, as amended, by a vote of 23–5, with one voting "present."

VOTES OF THE COMMITTEE

H.R. 2798 was reported favorably to the House, as amended, by a vote of 23–5, with one voting "present."

Voting yes: Lantos, Ackerman, Faleomavaega, Sherman, Wexler, Engel, Watson, Carnahan, Woolsey, Scott, Sires, Ros-Lehtinen, Gallegly, Manzullo, Pence, Wilson, Barrett, Fortenberry, McCaul, Poe, Inglis, Fortuno, and Bilirakis.

Voting no: Burton, Royce, Chabot, Tancredo, and Flake.

Voting "present": Jackson Lee.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with Clause 3(c)(2) of House Rule XIII, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R.2798, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 16, 2007.

Hon. TOM LANTOS, *Chairman,*
Committee on Foreign Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2798, the Overseas Private Investment Corporation Reauthorization Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sam Papenfuss, who can be reached at 226–2840.

Sincerely,

PETER R. ORSZAG.

Enclosure

cc: Honorable Ileana Ros-Lehtinen
Ranking Member

H.R. 2798—Overseas Private Investment Corporation Reauthorization Act of 2007

SUMMARY

H.R. 2798 would extend through 2011 the authority of the Overseas Private Investment Corporation (OPIC) to issue political risk insurance and to finance investments in developing countries and emerging market economies with direct loans and loan guarantees. Additionally, the bill would require OPIC to give preferential treatment to a variety of projects, including those in less-developed countries, those that respect workers' rights, those that promote the use of alternative energy sources, and those that agree to an international standard for transparency for projects that involve extractive industries, like mining and drilling. H.R. 2798 also would require OPIC to publish summaries of each project it approves on its Internet Web site, use competitive bidding to select managers for its investment funds, and create an office of accountability. Finally, the bill would allow OPIC to operate in Iraq on a permanent basis as well as in Gaza and Sudan with the concurrence of the Secretary of State.

CBO estimates that implementing H.R. 2798 would cost $6 million in 2008 and $74 million over the 2008–2012 period, assuming appropriation of the estimated amounts. Enacting the bill would not affect direct spending or revenues.

H.R. 2798 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 2798 is shown in the following table. The costs of this legislation fall within budget function 150 (international affairs).

By Fiscal Year, in Millions of Dollars

	2007	2008	2009	2010	2011	2012
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law for OPIC						
Estimated Authorization Level [1]	–124	–193	–190	–189	–195	–209
Estimated Outlays	–62	–144	–165	–176	–191	–207
Proposed Changes						
Estimated Authorization Level [2]	0	33	30	29	35	4
Estimated Outlays	0	6	7	12	23	26
Spending Under H.R. 2798 for OPIC						
Estimated Authorization Level	–124	–160	–160	–160	–160	–205
Estimated Outlays	–62	–138	–158	–164	–168	–181

Note: OPIC = Overseas Private Investment Corporation.

[1] The 2007 level is the amount appropriated for that year plus the estimated amount of offsetting collections for negative subsidy receipts in OPIC's credit program account and for collections in OPIC's noncredit account. The 2008–2012 levels are CBO's baseline projections for collections and administrative spending sufficient to service OPIC's outstanding portfolio.

[2] The estimated authorization level reflects the amount OPIC requested for its 2008 appropriation, adjusted for inflation, minus the estimated amount OPIC would need to service its outstanding portfolio of insurance, loans, and loan guarantees.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted before the end of fiscal year 2007, that the necessary funds and authority will be provided in annual appropriation acts near the start of each fiscal year, and that outlays will follow historical spending patterns for OPIC activities.

OPIC insures investors in developing countries and emerging markets against losses due to expropriation, currency inconvertibility, and damage that results from political violence. In addition, OPIC provides direct loans and loan guarantees to finance such investment. The bill would authorize OPIC to issue new insurance policies and to make direct loans and loan guarantees through 2011, to the extent the necessary authority and funds are provided in annual appropriations acts.

The estimated spending under current law assumes that OPIC continues to service its outstanding insurance and credits and to receive collections on its investments in U.S. securities, but that it issues no new insurance policies and finances no new investments after September 30, 2007. (Interest on existing securities brings in collections of more than $200 million a year to the OPIC account, but that interest is paid by the U.S. Treasury and thus shows up

as an offsetting payment elsewhere in the federal budget.) CBO expects that administrative expenses under current law would gradually be reduced to the minimum rate necessary to service outstanding insurance and credits.

CBO estimates that funding for administrative expenses and the cost of credit would be provided in annual appropriations acts at the level requested by OPIC for 2008—$77 million—adjusted for inflation. Additionally, we expect that under H.R. 2798, OPIC would continue to issue new insurance policies through 2011. Because the bill would extend OPIC's authorities through 2011 only, we estimate that funding in 2012 would only be needed for the administrative expenses of servicing outstanding insurance, direct loans, and loan guarantees.

For the past few years, the subsidy rate for many loan guarantees made by OPIC has been negative, thus generating discretionary offsetting collections. CBO estimates that under current law those collections would gradually decline from $36 million in 2007 to $6 million in 2011. Under the bill, CBO estimates that negative subsidy collections would increase by $114 million over the 2008–2012 period, and those collections are reflected in the net estimated costs over the 2008–2012 period.

Based on information from OPIC, CBO estimates that the new requirements in H.R. 2798 would not significantly affect the costs of OPIC's operations. Accordingly, CBO estimates that extending OPIC's authorization through 2011 would have a net cost of $6 million in 2008 and $74 million over the 2008–2012 period, assuming appropriation of the necessary funds.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 2798 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local or tribal governments.

ESTIMATE PREPARED BY:

Federal Costs: Sam Papenfuss (226–2840)
Impact on State, Local, and Tribal Governments: Neil Hood (225–3220)
Impact on the Private Sector: Paige Piper/Bach (226–2960)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of House rule XIII, upon enactment of this legislation, the Overseas Private Investment Corporation should use the support programs that it offers to promote internationally-recognized worker rights, encourage the use of clean and efficient energy technology, and deter investments in states that sponsor terrorism, engage in nuclear proliferation, or commit acts of genocide.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8 of the Constitution.

NEW ADVISORY COMMITTEES

H.R. 2798 does not establish or authorize any new advisory committees.

CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 2798 does not apply to the Legislative Branch.

EARMARK IDENTIFICATION

H.R. 2798 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title.

This section states that this Act may be cited as the "Overseas Private Investment Corporation Reauthorization Act of 2007."

Section 2. Findings.

This section includes several findings that support the reauthorization of the Overseas Private Investment Corporation, hereafter referred to as "OPIC" or "the Corporation." The findings note that since its creation in 1971, the Corporation has generated $71,000,000,000 in United States exports and supported more than 271,000 United States jobs. Beyond its goal of assisting less developed countries, the Committee believes that OPIC should continue to prioritize expanding U.S. exports, supporting U.S. jobs, and assisting U.S. small- and medium-sized businesses.

This section also notes that OPIC assistance is a privilege and should be granted to persons who, along with their affiliated companies, demonstrate responsible and sustainable business practices, particularly with regard to the environment, international worker rights, and efforts against genocide and nuclear proliferation. Moreover, OPIC is in a unique position to advance democracy by supporting investments in those countries that promote human rights and the rule of law as opposed to countries that have oppressive regimes.

Section 3. Reauthorization of OPIC Programs.

This section amends section 235 of the Foreign Assistance Act of 1961 (FAA) by reauthorizing OPIC through September 30, 2011. The Corporation's current authority expires September 30, 2007.

Section 4. Preferential Consideration of Certain Investment Projects.

This section amends section 231 of the FAA to require OPIC to give preferential consideration to investment projects in less developed countries, the governments of which are receptive to private enterprise and are willing and able to maintain conditions that en-

able private enterprise to make its full contribution to the development process. The Committee believes that the prospects for a country's development are improved, especially over the long run, when the host government protects the human rights of its people, strengthens the rule of law, and promotes democratic governance.

Section 5. Requirements Regarding International Worker Rights.

This section amends section 231A of the FAA to require OPIC to take certain measures to strengthen the rights of workers overseas. This subsection requires that OPIC support a project only if the country in which the project is to be undertaken has made or is making significant progress toward the recognition, adoption, and implementation of laws that substantially provide international worker rights. Here, "international worker rights" is defined as the International Labor Organization (ILO) core labor standards plus acceptable conditions of work. Current law provides that the Corporation may support a project only if the country in which the project is to be undertaken is taking steps to adopt and implement laws that extend internationally-recognized worker rights to workers in that country. This requirement does not, however, prohibit the Corporation from supporting a project that provides humanitarian assistance. Moreover, each eligible investor will be required contractually not to take any action to obstruct or prevent an employee from exercising their international worker rights, a greater commitment than what was previously required. This subsection also requires, to the degree possible and consistent with its development objectives, OPIC to give preferential consideration to projects in countries that have adopted, maintain, and enforce laws that substantially provide international worker rights.

The Committee believes that promoting international worker rights is a cornerstone of U.S. foreign policy, and OPIC should play an active role in this effort. OPIC must guarantee that all eligible investors provide for and respect international worker rights. While the Committee recognizes that the Corporation currently relies on the Generalized System of Preferences (GSP) process for verifying the majority of countries in which OPIC assistance may be provided, the Committee expects OPIC to implement a thorough review of its approval process for determining the eligibility of non-GSP cleared countries to ensure that OPIC assistance is not being used to reward those countries that fail to respect international worker rights.

The Committee also expects OPIC to carefully review all project applications to ensure that project sponsors have not previously committed serious violations of international worker rights and are not currently violating those rights on any current projects. OPIC should also closely and routinely monitor project compliance, and review any complaints related to a project.

Additionally, the Corporation should make every effort to further advance international worker rights abroad by giving preferential treatment to projects in countries that have adopted, maintain, and enforce laws that provide international worker rights. The Committee requires OPIC to promote U.S. investment in developing countries that proactively provide for international worker rights, rather than in those countries that are making minimal progress. Such a system should not reward minor progress of states toward

ensuring respect for workers; it should instead encourage U.S. investment in developing countries that respect the rights of workers in practice.

Subsection (b) amends section 233 of the FAA to state that the selection of the small business, organized labor, and cooperative directors to OPIC's Board should be made, respectively, in consultation with relevant representative organizations.

Subsection (c) amends section 238 of the FAA by broadening the definition of international worker rights to include the elimination of discrimination with respect to employment and occupation.

Subsection (d) amends section 239 of the FAA by making changes to OPIC's general provisions.

Section 6. Environmental Assessments.

This section amends section 231A of the FAA to require an OPIC project applicant to conduct an environmental impact assessment or audit for any project that is likely to have significant adverse environmental impacts. The assessment required by this section must be undertaken at least sixty days prior to OPIC approval and made available to the public.

The Committee believes that OPIC must maintain strong environmental safeguards. In furtherance of this mandate, interested parties in the Unites States and in the host country must have ample opportunity to comment on these assessments and audits. The Corporation must make readily accessible, in full, the aforementioned assessments and audits to all members of the Board of Directors, the American public, and all affected groups in the host country.

Section 7. Community Support.

This section amends section 237 of the FAA to require applicants for OPIC assistance to obtain broad community support for projects that are likely to have significant adverse environmental impacts. The Committee believes that securing the support of local communities potentially impacted by these projects is critical to ensuring effective results. Local support for the project is likely to be inadequate if efforts to obtain approval do not respect local community and indigenous decision making structures.

Efforts by the International Finance Corporation (IFC) to implement its Policy and Performance Standards on Social and Environmental Sustainability requirement for "broad community support" provide one model for understanding how the support of communities should be obtained. Applicants for OPIC assistance should obtain the support of indigenous peoples and other locally affected communities for proposed projects, and be manifested in specific and mutual agreements. Such agreements should result from a participatory process by which indigenous peoples, local communities, government agencies, and companies reach consensus in a forum that gives affected people enough leverage to negotiate the conditions under which the proposed project could proceed. Such a process should provide transparent and measurable outcomes that clearly benefit the community after project completion.

Section 8. Climate Change Mitigation Action Plan.

This section amends title IV of chapter 2 of part I of the FAA by inserting a new section after section 234A that requires OPIC to institute a climate change mitigation action plan. Within 180 days of enactment, the Corporation must institute a plan that: (1) establishes a goal of substantially increasing its support of projects that use, develop, or otherwise promote the use of clean energy technologies; and (2) gives preferential treatment to projects that use, develop, or otherwise promote the use of clean and efficient energy technologies. This section further requires OPIC to take into account the degree to which a project contributed to greenhouse gas emissions in making an environmental assessment under section 231A(b) (as amended by this Act). The Committee notes that Section 8 should not be construed to detract from OPIC's ability to respond to other environmental remediation projects.

In February 2007, the Intergovernmental Panel on Climate Change released its report on climate change science, finding "unequivocal" evidence that the Earth's climate is warming. The report further states that the current atmospheric concentrations of carbon dioxide and methane, two important greenhouse gas emissions, "exceeds by far the natural range over the last 650,000 years." In response, OPIC must develop and implement a comprehensive climate change mitigation plan that substantially reduces the Corporation's greenhouse gas footprint.

The World Bank Group, consistent with the carbon disclosure practices of a number of similar institutions and major corporations, is developing a system to estimate the impacts of overall greenhouse gas emissions in countries where it operates. Pursuant to the Clean Energy Investment Framework, mandated by the Group of 8 in Gleneagles in 2005 and subsequently being developed by the World Bank Group, similar work is being initiated. The options assessment will include an ex ante accounting for all direct and indirect greenhouse gas emissions and the project lifetime trajectory of those expected emissions.

The Committee expects OPIC to develop a climate change mitigation action plan and ensure that its environmental impact assessments include an accounting of both direct and indirect greenhouse gas emissions over the lifetime of all projects assisted by the Corporation.

Private sector firms Citigroup and Bank of America set clean energy investment targets of $50 billion and $20 billion respectively. In 2005, Goldman Sachs set a $1 billion target for clean energy and met that target. The World Bank has adopted a target to increase investments in "new renewable energy" by 20 percent annually. Similarly, OPIC should establish, as appropriate, a goal that at least 10 percent of its aggregate loan, guarantee, and insurance authority goes to support projects that use, develop, or otherwise promote clean and efficient energy technologies or energy conservation. A wide variety of options are available to the Corporation for meeting this goal, including investments in solar technology, energy efficiency, geothermal technology, carbon capture systems, and other technologies that significantly reduce emissions of greenhouse gases. OPIC should avoid any investment in controversial projects involving nuclear energy, environmentally questionable hydroelectric projects over 10 megawatts, or wind projects which have

a negative environmental impact which may exceed its positive environmental impact.

Some observers have expressed concern about providing U.S. assistance to projects that involve extractive industries. An extractive industry refers to an enterprise engaged in the exploration, development, or extraction of oil and gas reserves, metal ores, gemstones, industrial minerals, or coal. History has shown that while these industries have generated a lot of government revenues, many of these have been exploited for personal gain by public officials. In recent years, many in the international community have sought to address these problems by promoting an array of "good governance" measures aimed at increasing the transparency of these projects. For example, the International Finance Corporation (IFC), a component of the World Bank Group, requires that clients of all IFC-financed extractive industry projects publicly disclose their material payments from those projects to the host government(s).

Section 8 contains a number of requirements for OPIC to support projects that involve the extractive industries. This section requires OPIC to notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate 30 days prior to approving any project which significantly involves an extractive industry where OPIC financing exceeds $10,000,000.

This section further mandates that in order for OPIC to support a project that involves the extractive industry, either the host country or project sponsor must commit to the Extractive Industries Transparency Initiative (EITI) principles and criteria, or substantially similar principles and criteria. The EITI supports improved governance in resource-rich countries through the verification and full publication of the project sponsor's payments and government revenues.

By "substantially similar principles and criteria," the Committee means the general agreement of EITI principles, as well as the adoption of specific criteria, including:

1) Regular publication of all material oil, gas and mining payments by companies to governments and all material revenues received by governments from oil, gas and mining companies to a wide audience in a publicly accessible, comprehensive and comprehensible manner. Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards;
2) Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified;
3) This approach should be extended to all companies including state-owned enterprises;
4) Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate; and

5) A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

Finally, this section requires the Corporation, to the degree possible and consistent with its development objectives, to give preference to a project in which both the eligible investor and host country has agreed to implement the Extractive Industries Transparency Initiative principles and criteria, or substantially similar principles and criteria.

The Committee believes that OPIC should also seek the disclosure of such documents as Host Government Agreements, Concession Agreements, and bidding documents, allowing in any such dissemination or disclosure for the redaction of, or exceptions for, business proprietary information or information that would create a competitive disadvantage.

The Committee commends OPIC for its transition away from assisting large oil and gas projects to focus on projects that better meet its development mandate. Limited public resources for foreign assistance should focus on the many critical needs of developing countries. Extractive industries have significant access to private capital markets and increasingly do not need OPIC assistance.

Following a 2-year multi-stakeholder process that evaluated the effects of international oil projects on poverty reduction and the environment in a development country and on the global climate, the Extractive Industries Review of the World Bank Group recommended an end to financing oil projects by the World Bank Group by 2008 and that from January 1, 2007, clients of all IFC-financed extractive industry projects publicly disclose their material payments from those projects to the host government(s). Similarly, OPIC is currently prohibited from providing direct investment loans to finance any project that involves the extraction of oil and gas. The Committee discourages the Corporation from pursuing or issuing contracts of insurance, reinsurance, or any guaranty, entering into any agreement to provide financing, or providing other assistance for projects that involve the development, extraction, processing or transportation of crude oil.

While the Committee has not legislatively prohibited the Corporation from supporting projects that significantly involve an extractive industry, the provisions in this section will greatly improve the transparency of OPIC's investment in extractive industries. The Committee will closely monitor OPIC's efforts to improve transparency when considering the appropriateness of the Corporation's involvement in this sector. OPIC should include in its annual report to Congress information concerning the progress made by the Corporation in implementing the provisions contained in this section.

Section 9. Prohibition on Assistance to Develop or Promote Certain Railway Connections and Railway-Related Connections.

This section amends section 237 of the FAA to prohibit OPIC from supporting the development or promotion of any railway connection that does not traverse or connect with Armenia and does connect Azerbaijan and Turkey. While the prohibition in this sec-

tion is limited to railway projects in the Caucasus, the Committee believes that the Corporation should not support any projects designed to deliberately isolate countries friendly to the United States or which otherwise shut out a country allied with the United States from participation in a regional development project.

The Committee commends OPIC's President, Robert Mosbacher, for his commitment to prohibit OPIC support for a controversial railway project in the Caucasus. This section will ensure that future presidents likewise avoid OPIC participation in this and similar railway development projects. The proposed Kars-Tbilisi-Baku railway is estimated to cost as much as $800 million. The existing railroad could be utilized to connect these cities more efficiently and for a tiny fraction of the cost if an existing rail linkage through Armenian territory would be utilized. However, efficient and inexpensive development of rail connections in the region is not the only goal of this project, as evidenced by statements of Azeri officials, including President Aliyev. Isolation of Armenia is a significant motivating factor in the route of this proposed railway. U.S. support for projects in this region should be used to promote economic development and, where possible, to lay the groundwork for reconciliation through *mutual* benefit and should support projects that reinforce the need for peaceful coexistence between Armenia and its neighbors.

Section 10. Ineligibility of Persons Doing Certain Business with State Sponsors of Terrorism.

Section 10 adds a new subsection (r) to Section 237 of the FAA to make ineligible for OPIC assistance persons with certain business activity in or with state sponsors of terrorism.

Paragraph (1) provides that OPIC may not support an applicant's project where an applicant for OPIC assistance has an investment commitment valued at $20 million or more in the energy sector of a country identified by the Department of State as a state sponsor of terrorism, or where an applicant has an outstanding loan or extension of credit to the government of one of the countries designated as a state sponsor of terrorism. Sales of goods and services, other than food or medicine, on anything other than a cash basis constitute an extension of credit for these purposes.

The Committee believes that OPIC assistance is a privilege, not a right. The Committee believes that only good actors should receive such assistance, which does not include those persons engaged in business activities in or with countries designated by the Department of State as state sponsors of terrorism. United States law and regulations apply a wide array of sanctions to these countries, often prohibiting U.S. persons from conducting most transactions with these countries. The Committee is aware that for the most part, U.S. firms are already prohibited from conducting the activities described in this section.

Paragraph (2) defines cash basis as requiring payment within 45 days of receipt of goods. Allowing a government buyer to keep open accounts beyond 45 days, either by agreement or because the seller regularly declines to demand or otherwise enforce its right to timely payment, shall be considered an impermissible extension of credit. Investment commitment in the energy sector is broadly defined

to include any commitment to help develop petroleum and/or natural gas resources of the countries.

While the Committee employs a similar definition of an investment commitment to that used in the Iran Sanctions Act (50 U.S.C. 1701 note), the Committee does not intend for that statute to govern this provision's application to investments in Iran. The Department of State has willfully ignored that law and failed to find a single violation of the statute since 1998. OPIC should not find that a company or any of the applicable affiliated entities are eligible for OPIC assistance merely because the Department of State has never found them in violation of the Iran Sanctions Act. OPIC should take every necessary step to determine whether there is a disqualifying investment commitment. Where some evidence exists (perhaps through reportage in the financial press) that an applicant or an applicable affiliated entity has a disqualifying energy sector investment in any of the state sponsors of terrorism, then the burden of proof should be on the applicant to demonstrate to the Corporation that it and its applicable affiliates does not have such an investment.

Paragraph (3) requires that the chief executive officers of applicant firms certify as part of the application process that their firms are not undertaking the disqualifying activities. The chief executive officer of an applicant will sign on behalf of his/her firm and any subsidiaries in which they hold a majority stake. If the applicant cannot certify that it, and its majority owned subsidiaries, are not undertaking these activities, they are ineligible for OPIC assistance. The ultimate parent entity of the applicant must similarly certify that it, and its majority-owned subsidiaries, is not conducting the disqualifying activities. The ultimate parent of an applicant is the entity at the top of the majority-ownership chain. For example, if more than 50 percent of the shares of an applicant are owned by company A, and if more than 50 percent of the shares of company A are in turn owned by company B and if no single entity owns 50% of company B, then the highest ranking executive of company B must certify that his/her company and any of its majority-owned subsidiary entities are not engaged in disqualifying activities described by this section. The term "chief executive officer" is meant as a descriptive term—the highest ranking officer of the company should sign the required certification, whatever his/her title may be.

The Committee has been concerned that U.S. corporations have used their foreign-incorporated subsidiaries to avoid U.S. sanctions laws. While this conduct may sometimes comply with the letter of the law, the Committee believes that such corporations should prevent their subsidiaries and other affiliates under their control from doing business in countries that are state sponsors of terrorism. Firms that fail to take this action should, at a minimum, face a loss of OPIC assistance to all of the companies they control.

The certifications are designed to ease implementation and enforcement of the provision. In making the required certifications, the signing officers should not rely on the fact that their firms and any applicable affiliates have not been found in violation of the Iran Sanctions Act or any other statutes and regulations concerning business with state sponsors of terrorism. The officers may know more about the corporations they control than the Depart-

ment of State can learn or process. The officers must sign under penalty of perjury and their inquiries into their own firm's and any applicable affiliates' activities should therefore be exacting. The Committee expects signing officers to err on the side of caution when possible disqualifying activities are found. Likewise, the Corporation should not simply take at face value the certifications provided by applicable officers. There are a number of sources available that will allow the Corporation to periodically verify the accuracy of certifications.

A chief executive officer may provide a required certification under an exemption to the certification requirements provided for in subsection (E) notwithstanding the fact that an affiliated entity has a $20 million investment commitment in the energy sector of one of the state sponsors of terrorism or has an outstanding loan or extension of credit to one of the governments of those countries, so long as the affiliated entity's disqualifying activity occurred prior to the time of affiliation. However, if an existing business relationship or contract that would be a disqualifying act is expanded or extended temporarily after acquisition, than this exemption shall not apply. For example, an executive required to provide one of the certifications called for by this section may do so notwithstanding the fact that a firm that his/her corporation acquired two years ago has an investment in the energy sector of Sudan pursuant to a contract entered into prior to the acquisition of the subsidiary. If however, the contract were to be extended for an additional period, or expanded to include additional development, the certification could not be made.

Subparagraph (3) also applies the certification requirement to "straw man" transactions, which involve a non-applicant firm that receives much of the benefits of OPIC assistance and provides much of the goods or services supported by the assistance, but which is not directly in contract with OPIC. The applicant firm should be considered a "straw man" if the applicant is: (1) buying goods and services from another firm, and (2) those goods or services are worth 50 percent or more of the total provided to the project by the applicant, and (3) the other, non-applicant firm will receive $20 million or more or an amount equal to or greater than 50 percent of the value of the OPIC assistance as consideration for the goods and services provided. The chief executive officer of the non-applicant firm is required to sign the certification called for by Paragraph 3(A) and any ultimate parent entity of the non-applicant firm must sign the certification required by Paragraph 3(B). This provision is meant to prevent a situation where one firm would be able to effectively receive OPIC assistance notwithstanding prohibited activities, through contract or other commitment with another firm that would be the actual applicant.

Subsection (4) sets out an exception for otherwise disqualifying investments or business in certain areas of Sudan, including Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, and Abei, Darfur, if the Corporation, with the concurrence of the Secretary of State, determines that the investment or other business will provide humanitarian relief, promote self-sufficiency or support certain peace agreements.

The Committee acknowledges that certain investments and business in Sudan, especially in the South, may actually benefit the

cause of peace and beneficial economic development for the very people who have been victimized by the regime in Khartoum. The Committee provides that the disqualification in section 10 should not apply to business activities by applicants in Sudan that benefit certain populations of the country. The Committee strongly believes that OPIC should provide assistance for projects in certain areas of Sudan, including Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, and Abei, Darfur.

Subsection (5) provides for the termination of these provisions with respect to a country if the President certifies that the country is no longer a state sponsor of terrorism and also does not have nuclear weapons or a program to develop nuclear weapons, and is no longer committing genocide or "ethnic cleansing that approaches genocide." This section applies to any country listed by the Department of State as a sponsor of terrorism. However, in order for this provision to cease to be effective against a country, its government must demonstrate, and the President must affirmatively concur, that it no longer supports terrorism and no longer has a nuclear program or possesses nuclear weapons, and is no longer committing genocide or a program of ethnic cleansing that approaches genocide.

The Committee, through previous legislative action, has determined the Khartoum government's actions in Darfur constitute genocide. In the future, whether similarly gross violations against human rights rise to the level of genocide may be debated. The Committee believes that the inclusion of the term "ethnic cleansing that approaches genocide" should avoid ambiguity with respect to the termination of this provision.

Section 11. Increased Transparency.

This section amends section 237 of the FAA to increase the transparency of OPIC activities. Subsection (a) requires the Corporation (1) to make public, and post on its Internet website, summaries of all new projects supported by the Corporation (excluding any confidential business information), and (2) to publish in the Federal Register and subject to a period of public comment, the detailed methodology used to assess and monitor the impact of projects supported by the Corporation on the development and environment of, and international worker rights in, host countries, and on United States employment. Subsection (a) also requires that OPIC's Board of Directors may not vote in favor of any action proposed to be taken by the Corporation on any Category A project until at least 60 days after the Corporation makes available for public comment a summary of the project and relevant information about the project.

To strengthen its monitoring of international worker rights and environmental practices and to enhance the credibility of its efforts in these areas among outside parties, the Committee expects OPIC to make its procedures significantly more transparent, adopting industry best practices of posting information about controversial cases, internal and third-party inspection results, and remediation follow-up on OPIC's website.

The Committee expects the Corporation to make available on its website as much project information as possible without disclosing business confidential information. The Committee expects the Cor-

poration to make available to the public in whole all eligible documents and the eligible portions of documents containing relevant information on environmental, economic, social, and worker rights impacts, including pre-approval and post-approval documents.

The Committee is concerned by the lack of information regarding the methodologies employed by OPIC to determine whether it is complying with its mandate. To ensure that OPIC is meeting its obligations, OPIC must publish in the Federal Register, subject to a period of public comment, the detailed methodology used to assess and monitor the impact of projects supported by the Corporation on the development and environment of, and international worker rights in, host countries, and on United States employment.

OPIC is additionally subject to new requirements intended to increase the transparency of "Category A" projects, which involve projects that have a significant adverse environmental impact. OPIC's Board of Directors cannot vote in favor of any "Category A" project until at least 60 days after the Corporation makes available for public comment a summary of the project and all eligible and relevant information about the project. It is the intent of the Committee that the Corporation, to the maximum extent practicable, works with relevant and concerned parties in assessing the environmental impact of its projects and provides substantive responses to the concerns of the American public, affected groups in the area of impact of the proposed project, host country non-governmental organizations, and other stakeholders. Consequently, the Corporation is barred from approving any "Category A" project unless all members of the Board of Directors receive 7 days prior to the vote full copies of the Corporation's responses to the comments received from all stakeholders.

Subsection (b) requires OPIC to maintain an Office of Accountability to provide problem-solving services for projects supported by the Corporation and to review the Corporation's compliance with its environmental, social, worker rights, human rights, and transparency policies and procedures. The Committee expects the Office of Accountability to operate in a manner that is fair, objective and transparent.

The Corporation is to be commended for establishing an Office of Accountability, which was called for in the Overseas Private Investment Corporation Amendments Act of 2003. The Committee expects OPIC to properly maintain the Office. The Office of Accountability must provide problem-solving services for OPIC-supported projects, and it must, on an ongoing basis, review the Corporation's compliance with its environmental, social, worker rights, human rights, and transparency policies and procedures.

Section 12. Fraud and Other Breaches of Contract.

The Committee recognizes and commends OPIC for its efforts to address cases of fraud. To ensure that OPIC upholds the highest standards of accountability, the Committee, under this section, requires the President of OPIC to refer to the Department of Justice for appropriate action information known to the Corporation concerning any substantial evidence of: (1) a violation of this title; (2) a material breach of contract entered into with the Corporation by an eligible investor; or (3) a material false representation made by an investor to the Corporation. This section does not apply if the

President of the Corporation concludes that the matter is not evidence of a possible violation of criminal law and is not evidence that the Federal Government is entitled to civil remedy or to impose a civil penalty.

Section 13. Transparency and Accountability of Investment Funds.

Subsection (a) amends Section 239 of the FAA by adding provisions relating to transparency and accountability of OPIC investment funds. This subsection mandates that the Corporation contract with persons to manage investment funds only by full and open competition. This subsection also requires that OPIC consider various factors in assessing proposals for investment fund management, including the prospective fund manager's track record in investing risk capital in emerging markets, and its record in avoiding investments in companies that would be disqualified under section 237(r) of the FAA (as added by section 10 of this Act).

The Committee requires OPIC to select the investment fund management through a competitive and open process, using criteria that assess the prospective management's experience and track record. The Committee recognizes and commends OPIC for initiating this policy already as a response to abuses in the 1990s. The Committee intends to legislatively mandate this reform.

The Committee requires OPIC to report on the investment fund management selection process. Existing reporting on the investment funds leaves it unclear how competitive it actually is for capital management firms to secure OPIC management contracts. The Committee requires this information to assess the competitiveness of the selection process, as well as the nature of the investment fund market. This information is especially important given the increasing number of OPIC investment funds. The Committee also intends that investment fund managers and beneficiary firms be considered applicants for OPIC assistance for purposes of section 10.

Subsection (b) requires the Government Accountability Office to carry out an independent assessment of the investment fund portfolio of OPIC.

Section 14. Extension of Authority to Operate in Iraq.

This section amends section 239 of the FAA to allow OPIC to support projects in Iraq, notwithstanding subsection (a) and (b) of section 237 of the FAA. Those provisions require that there be an agreement in place with the government of any country in which it operates and that suitable conditions exist to protect the interests of the Corporation. Given the violent and chaotic situation in Iraq, and due to difficulties in dealing with an unstable Iraqi government, no agreement is in place between the United States and Iraq to provide OPIC assistance.

The Committee has provided limited authority to allow OPIC to provide assistance to projects in Iraq, notwithstanding subsection (a) and (b) of section 237 of the FAA. The Corporation should otherwise comply with all other requisite mandates, including worker rights provisions, in operating in that country. The committee has permitted OPIC to support development in Iraq provided that Iraq is taking substantial steps toward reaching such an agreement with the United States and making definitive progress towards es-

tablishing the conditions that protect the interest of the Corporation.

Section 15. Consistency with Existing Law.

This section amends section 239 of the FAA to ensure that OPIC, in providing support for projects in the West Bank and Gaza, is complying with other statutory restrictions related to providing U.S. assistance to these areas. Additionally, OPIC may not support a project in any part of Gaza or the West Bank unless the Secretary of State determines that the location for the project is not under the effective control of Hamas or any other foreign terrorist organization designated under section 219 of the Immigration and Nationality Act.

Congress enacted the Palestinian Anti-Terrorism Act of 2006 in December, 2006. The Act was a response to the Palestinian elections held in January 2006, where Hamas, a group designated by the State Department as a foreign terrorist organization, won a majority of seats in the Palestinian Parliament. The intent of this section is to clarify that the restrictions on U.S. assistance provided for under that Act apply to OPIC assistance.

Section 16. Congressional Notification Regarding Maximum Contingent Liability.

This section amends section 239 of the FAA to require that OPIC notifies the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations within 15 days after the Corporation's maximum contingent liability outstanding exceeds the previous fiscal years maximum contingent liability by 25 percent.

Although world economic conditions have been stable in recent years and OPIC is well-reserved against potential losses, future economic instability or financial shocks in developing markets (such as occurred in Mexico, Asia, Russia and Brazil from 1994–1999) cannot be ruled out. Such an eventuality, while perhaps unlikely, could raise into question the ability of OPIC to absorb potential losses without having to seek appropriations funding from the Congress. This provision requires that Congress be given "early warning" of any undue expansion of OPIC's balance sheet, thereby helping to enhance Congressional oversight and help shield the American taxpayers from potential liability.

Section 17. Assistance for Small Business and Entities.

This section amends section 240 of the FAA by requiring that OPIC commit adequate staff and resources to assist small businesses and investors in the United States with obtaining the insurance, reinsurance, financing, and the other types of support that the Corporation offers. The Corporation is required to detail in each annual report the progress it has made in terms of assisting small business by including: (1) a description of the staff and resources directed to this area; (2) the number of small businesses and investors that the Corporation has supported, and the total dollar value associated with that support; and (3) a description of each small business project that the Corporation supported.

OPIC continues to play a critical role in helping U.S. small- and medium-sized enterprises (SMEs) operate abroad. OPIC already has an existing Small Business Center that offers a streamlined

approval process to help SMEs access the OPIC services. The Small Business Center is headed by a Vice President who reports directly to the President and CEO of OPIC. OPIC also has teams of specialists within their insurance division and other divisions within OPIC (such as the General Counsel's office) to cater to the unique needs of SMEs. The Committee commends OPIC for taking these initiatives to administratively create these offices to meet the challenges of serving United States SMEs. As a result, OPIC's financing support to U.S. SMEs grew 62 percent over the past 10 years—to $320—million since attention was first brought to this issue. More than 80 percent of all OPIC projects approved in 2006 were for U.S. SMEs—up from just 18 percent in 1996. The Committee strongly encourages more U.S. small businesses to get involved in exporting as one way to help lower the nation's trade deficit. Having various Federal trade promotion agencies pay special attention to SMEs by ensuring that adequate resources and personnel are in place will go a long way toward accomplishing the goal of increased U.S. exports.

The purpose of Section 17 is to ensure that OPIC will continue to have a specialized cadre of experts on staff that understand and can quickly respond to the unique needs of SMEs. Small businesses often have tighter time frames in which to conclude a deal and cannot afford to wait in line behind an application filed in support of a complex, "big business" deal. Section 17 is intended to give maximum management flexibility to OPIC in implementing this provision which would allow OPIC to maintain its current structure with respect to SMEs or to streamline the small and medium business operations at some point in the future. However, the Committee wants to also ensure that the SME team at OPIC includes senior officials, including at least one individual at the Vice President level, that reports directly to the President and CEO of OPIC. This ensures that the voice of SMEs will continue to be heard at the top in order to implement policies or procedures that respond to the ever changing needs of SMEs engaged in the global marketplace. The Committee would strongly disapprove any downgrading of the current structure at OPIC that is designed to assist SMEs.

Section 17 also ensures that OPIC reveals as part of its annual report various performance measurements as to how OPIC served U.S. SMEs during the previous year. The information shall include a description of the personnel and resources OPIC primarily dedicates to SMEs, the number of SMEs helped by OPIC's programs, the dollar volume of such assistance, and a description of the SME projects. This information will give the Committee and the general public another tool by which to evaluate the effectiveness of OPIC.

Section 18. Technical Corrections.

This section amends various sections of the FAA to make technical and conforming corrections.

Section 19. Effective Date.

Subsection (a) establishes that the Overseas Private Investment Corporation Reauthorization Act of 2007 and the amendments made by the Act shall apply to only applications for OPIC support that both are received by the Corporation on or after July 1, 2007

and also approved by the Corporation on or after the date of the enactment of the Act.

Subsection (b) establishes that the Overseas Private Investment Corporation Reauthorization Act of 2007 and the amendments made by the Act shall apply to any extension or renewal of OPIC support that was entered into before the enactment of the Act if the extension or renewal is approved on or after the date of the enactment of the Act.

Subsection (b) establishes that the Overseas Private Investment Corporation Reauthorization Act of 2007 and the amendments made by the Act do not apply to an extension or renewal of OPIC support that is substantially identical to an extension or renewal formally requested before July 1, 2007.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

FOREIGN ASSISTANCE ACT OF 1961

PART I

* * * * * * *

TITLE IV—OVERSEAS PRIVATE INVESTMENT CORPORATION

SEC. 231. CREATION, PURPOSE AND POLICY.—To mobilize and facilitate the participation of United States private capital and skills in the economic and social development of less developed countries and areas, and countries in transition from nonmarket to market economies, thereby complementing the development assistance objectives of the United States, there is hereby created the Overseas Private Investment Corporation (hereinafter called the "Corporation"), which shall be an agency of the United States under the policy guidance of the Secretary of State.

* * *

* * * * * * *

[(f) to consider in the conduct of its operations the extent to which less developed country governments are receptive to private enterprise, domestic and foreign, and their willingness and ability to maintain conditions which enable private enterprise to make its full contribution to the development process;]

(f) to give preferential consideration to investment projects in less developed countries the governments of which are receptive to private enterprise, domestic and foreign, and to projects in countries the governments of which are willing and able to maintain conditions that enable private enterprise to make its full contribution to the development process;

* * * * * * *

SEC. 231A. ADDITIONAL REQUIREMENTS.—(a) [WORKER RIGHTS] *INTERNATIONAL WORKER RIGHTS.*—

[(1) LIMITATION ON OPIC ACTIVITIES.—The Corporation may insure, reinsure, guarantee, or finance a project only if the country in which the project is to be undertaken is taking steps to adopt and implement laws that extend internationally recognized worker rights, as defined in section 507(4) of the Trade Act of 1974, to workers in that country (including any designated zone in that country). The Corporation shall also include the following language, in substantially the following form, in all contracts which the Corporation enters into with eligible investors to provide financial support under this title: The investor agrees not to take actions to prevent employees of the foreign enterprise from lawfully exercising their right of association and their right to organize and bargain collectively. The investor further agrees to observe applicable laws relating to a minimum age for employment of children, acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety, and not to use forced labor. The investor is not responsible under this paragraph for the actions of a foreign government.

[(2) USE OF ANNUAL REPORTS ON WORKERS RIGHTS.—The Corporation shall, in making its determinations under paragraph (1), use the reports submitted to the Congress pursuant to section 504 of the Trade Act of 1974. The restriction set forth in paragraph (1) shall not apply until the first such report is submitted to the Congress.

[(3) WAIVER.—Paragraph (1) shall not prohibit the Corporation from providing any insurance, reinsurance, guaranty, or financing with respect to a country if the President determines that such activities by the Corporation would be in the national economic interests of the United States. Any such determination shall be reported in writing to the Congress, together with the reasons for the determination.]

(1) LIMITATION ON OPIC ACTIVITIES.—(A) The Corporation may insure, reinsure, guarantee, or finance a project only if the country in which the project is to be undertaken has made or is making significant progress towards the recognition, adoption, and implementation of laws that substantially provide international worker rights, including in any designated zone, or special administrative region or area, in that country.

(B) The Corporation shall also include the following language, in substantially the following form, in all contracts which the Corporation enters into with eligible investors to provide financial support under this title:

"The investor agrees not to take any actions to obstruct or prevent employees of the foreign enterprise from exercising their international worker rights (as defined in section 238(h) of the Foreign Assistance Act of 1961), and agrees to adhere to the obligations regarding those international worker rights."

(2) PREFERENCE TO CERTAIN COUNTRIES.—To the degree possible and consistent with its development objectives, the Corporation shall give preferential consideration to projects in countries that have adopted, maintain, and enforce laws that substantially provide international worker rights.

(3) USE OF ANNUAL REPORTS ON INTERNATIONAL WORKER RIGHTS.—The Corporation shall, in carrying out paragraph

(1)(A), use, among other sources, the reports submitted to the Congress pursuant to section 504 of the Trade Act of 1974. Such other sources include the observations, reports, and recommendations of the International Labor Organization, and other relevant organizations.

(4) INAPPLICABILITY TO HUMANITARIAN ACTIVITIES.—Paragraph (1) shall not prohibit the Corporation from providing any insurance, reinsurance, guaranty, financing, or other assistance for the provision of humanitarian assistance in a country.

[(4) In] *(5) ADDITIONAL DETERMINATION.—In* making a determination under this section for the People's Republic of China, the Corporation shall discuss fully and completely the justification for making such determination with respect to each item set forth in subparagraphs (A) through (E) of section 507(4) of the Trade Act of 1974.

[(b) ENVIRONMENTAL IMPACT.—The Board of Directors of the Corporation shall not vote in favor of any action proposed to be taken by the Corporation that is likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented, unless for at least 60 days before the date of the vote—

[(1) an environmental impact assessment or initial environmental audit, analyzing the environmental impacts of the proposed action and of alternatives to the proposed action has been completed by the project applicant and made available to the Board of Directors; and

[(2) such assessment or audit has been made available to the public of the United States, locally affected groups in the host country, and host country nongovernmental organizations.]

(b) ENVIRONMENTAL IMPACT.—The Board of Directors of the Corporation shall not vote in favor of any action proposed to be taken by the Corporation that is likely to have significant adverse environmental impacts, unless for at least 60 days before the date of the vote—

(1) an environmental impact assessment, or initial environmental audit, analyzing the environmental impacts of the proposed action and of alternatives to the proposed action has been completed by the project applicant and made available to the Board of Directors; and

(2) such assessment or audit has been made available to the public of the United States, locally affected groups in the host country, and host country nongovernmental organizations.

* * * * * * *

SEC. 233. ORGANIZATION AND MANAGEMENT.—(a) * * *

(b) BOARD OF DIRECTORS.—All powers of the Corporation shall vest in and be exercised by or under the authority of its Board of Directors ("the Board") which shall consist of fifteen Directors, including the Chairman, with eight Directors constituting a quorum for the transaction of business. Eight Directors shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall not be officials or employees of the Government of the United States. At least two of the eight Directors appointed under the preceding sentence shall be experienced in small business, one in organized labor, and one in cooperatives. Each such Director shall be appointed for a term of no more than three years. The terms of no more than three such Directors shall

expire in any one year. Such Directors shall serve until their successors are appointed and qualified and may be reappointed.

* * * * * * *

All Directors who are not officers of the Corporation or officials of the Government of the United States shall be compensated at a rate equivalent to that of level IV of the Executive Schedule (5 U.S.C. 5315) when actually engaged in the business of the Corporation and may be paid per diem in lieu of subsistence at the applicable rate prescribed in the standardized Government travel regulations, as amended, from time to time, while away from their homes or usual places of business. *The selection of the small business, organized labor, and cooperative directors should be made, respectively, in consultation with relevant representative organizations.*

* * * * * * *

SEC. 234. INVESTMENT INSURANCE AND OTHER PROGRAMS.—The Corporation is hereby authorized to do the following:

(a) * * *

(b) INVESTMENT GUARANTIES.—To issue to eligible investors guaranties of loans and other investments made by such investors assuring against loss due to such risks and upon such terms and conditions as the Corporation may determine: *Provided, however,* That such guaranties on other than loan investments shall not exceed 75 per centum of such investment: *Provided further,* That except for loan investments for credit unions made by eligible credit unions or credit union associations, the aggregate amount of investment (exclusive of interest and earnings) so guaranteed with respect to any project shall not exceed, at the time of issuance of any such guaranty, 75 per centum of the total investment committed to any such project as determined by the Corporation, which determination shall be conclusive for purposes of the Corporation's authority to issue any such guaranty: *Provided further,* That not more than 15 per centum of the maximum contingent liability of investment guaranties which the Corporation is permitted to have outstanding under section [235(a)(2)] *235(a)(1)* shall be issued to a single investor.

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[(g) PILOT EQUITY FINANCE PROGRAM.—

[(1) AUTHORITY FOR PILOT PROGRAM.—In order to study the feasibility and desirability of a program of equity financing, the Corporation is authorized to establish a 4-year pilot program under which it may, on the limited basis prescribed in paragraphs (2) through (5), purchase, invest in, or otherwise acquire equity or quasi-equity securities of any firm or entity, upon such terms and conditions as the Corporation may determine, for the purpose of providing capital for any project which is consistent with the provisions of this title except that—

[(A) the aggregate amount of the Corporation's equity investment with respect to any project shall not exceed 30 percent of the aggregate amount of all equity investment made with respect to such project at the time that the Corporation's equity investment is made, except for securities acquired through the enforcement of any lien, pledge, or contractual arrangement as a result of a default by any

party under any agreement relating to the terms of the Corporation's investment; and

[(B) the Corporation's equity investment under this subsection with respect to any project, when added to any other investments made or guaranteed by the Corporation under subsection (b) or (c) with respect to such project, shall not cause the aggregate amount of all such investment to exceed, at the time any such investment is made or guaranteed by the Corporation, 75 percent of the total investment committed to such project as determined by the Corporation.

The determination of the Corporation under subparagraph (B) shall be conclusive for purposes of the Corporation's authority to make or guarantee any such investment.

[(2) LIMITATION TO PROJECTS IN SUB-SAHARAN AFRICA AND CARIBBEAN BASIN.—Equity investments may be made under this subsection only in projects in countries eligible for financing under this title that are countries in sub-Saharan Africa or countries designated as beneficiary countries under section 212 of the Caribbean Basin Economy Recovery Act.

[(3) ADDITIONAL CRITERIA.—In making investment decisions under this subsection, the Corporation shall give preferential consideration to projects sponsored by or significantly involving United States small business or cooperatives. The Corporation shall also consider the extent to which the Corporation's equity investment will assist in obtaining the financing required for the project.

[(4) DISPOSITION OF EQUITY INTEREST.—Taking into consideration, among other things, the Corporations' financial interests and the desirability of fostering the development of local capital markets in less developed countries, the Corporation shall endeavor to dispose of any equity interest it may acquire under this subsection within a period of 10 years from the date of acquisition of such interest.

[(6) CONSULTATIONS WITH CONGRESS.—The Corporation shall consult annually with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate on the implementation of the pilot equity finance program established under this subsection.]

[(h)] *(g)* LOCAL CURRENCY GUARANTIES FOR ELIGIBLE INVESTORS.—To issue to—

(1) * * *

* * * * * * *

SEC. 234B. CLIMATE CHANGE MITIGATION.

(a) MITIGATION ACTION PLAN.—The Corporation shall, not later than 180 days after the date of the enactment of the Overseas Private Investment Corporation Reauthorization Act of 2007, institute a climate change mitigation action plan that includes the following:

(1) CLEAN AND EFFICIENT ENERGY TECHNOLOGY.—

(A) INCREASING ASSISTANCE.—The Corporation shall establish a goal of substantially increasing its support of projects that use, develop, or otherwise promote the use of clean energy technologies over the 4-year period beginning

on the date of the enactment of the Overseas Private Investment Corporation Reauthorization Act of 2007.

(B) PREFERENTIAL TREATMENT TO PROJECTS.—The Corporation shall give preferential treatment to the evaluation and awarding of assistance for and provide greater flexibility in supporting projects that use, develop, or otherwise promote the use of clean and efficient energy technologies.

(2) ENVIRONMENTAL IMPACT ASSESSMENTS.—

(A) GREENHOUSE GAS EMISSIONS.—The Corporation shall, in making an environmental impact assessment for a project under section 231A(b), take into account the degree to which the project contributes to the emission of greenhouse gases.

(B) OTHER DUTIES NOT AFFECTED.—The requirement under subparagraph (A) is in addition to any other requirement, obligation, or duty that the Corporation has.

(3) REPORT TO CONGRESSIONAL COMMITTEES.—The Corporation shall, within 180 days after the date of the enactment of the Overseas Private Investment Corporation Reauthorization Act of 2007, submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report on the plan developed to carry out paragraph (1)(A). Thereafter, the Corporation shall include in its annual report under section 240A a discussion of such plan and its implementation.

(b) EXTRACTION INVESTMENTS.—

(1) PRIOR NOTIFICATION TO CONGRESSIONAL COMMITTEES.—The Corporation may not approve any contract of insurance or reinsurance, or any guaranty, or enter into any agreement to provide financing for any project which significantly involves an extractive industry and in which assistance by the Corporation would be valued at $10,000,000 or more (including contingent liability), until at least 30 days after the Corporation notifies the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate of such contract or agreement.

(2) COMMITMENT TO EITI PRINCIPLES.—The Corporation may approve a contract of insurance or reinsurance, or any guaranty, or enter into an agreement to provide financing to an eligible investor for a project that significantly involves an extractive industry only if—

(A) the eligible investor has agreed to implement the Extractive Industries Transparency Initiative principles and criteria, or substantially similar principles and criteria; or

(B) the host country where the project is to be carried out has committed to the Extractive Industries Transparency Initiative principles and criteria, or substantially similar principles and criteria.

(3) PREFERENCE FOR CERTAIN PROJECTS.—With respect to all projects that significantly involve an extractive industry, the Corporation, to the degree possible and consistent with its development objectives, shall give preference to a project in which both the eligible investor has agreed to implement the Extractive Industries Transparency Initiative principles and criteria, or substantially similar principles and criteria, and the host

country where the project is to be carried out has committed to the Extractive Industries Transparency Initiative principles and criteria, or substantially similar principles and criteria.

(4) DEFINITIONS.—In this subsection:

(A) EXTRACTIVE INDUSTRY.—The term "extractive industry" refers to an enterprise engaged in the exploration, development, or extraction of oil and gas reserves, metal ores, gemstones, industrial minerals, or coal.

(B) EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE PRINCIPLES AND CRITERIA.—The term "Extractive Industries Transparency Initiative principles and criteria" means the principles and criteria of the Extractive Industries Transparency Initiative, as set forth in Annex A to the Anti-Corruption Policies and Strategies Handbook of the Corporation, as published in September 2006.

(5) REPORTING REQUIREMENT.—The Corporation shall include in its annual report required under section 240A a description of its activities to carry out this subsection.

(c) DEFINITIONS.—In this section:

(1) CLEAN AND EFFICIENT ENERGY TECHNOLOGY.—The term "clean and efficient energy technology" means an energy supply or end-use technology—

(A) such as—

(i) solar technology;

(ii) wind technology;

(iii) geothermal technology;

(iv) hydroelectric technology; and

(v) carbon capture technology; and

(B) that, over its life cycle and compared to a similar technology already in commercial use—

(i) is reliable, affordable, economically viable, socially acceptable, and compatible with the needs and norms of the country involved;

(ii) results in—

(I) reduced emissions of greenhouse gases; or

(II) increased geological sequestration; and

(iii) may—

(I) substantially lower emissions of air pollutants; or

(II) generate substantially smaller and less hazardous quantities of solid or liquid waste.

(2) GREENHOUSE GAS.—The term "greenhouse gas" means—

(A) carbon dioxide;

(B) methane;

(C) nitrous oxide;

(D) hydrofluorocarbons;

(E) perfluorocarbons; or

(F) sulfur hexafluoride.

SEC. 235. ISSUING AUTHORITY, DIRECT INVESTMENT AUTHORITY AND RESERVES.—

(a) ISSUING AUTHORITY.—

(1) * * *

(2) TERMINATION OF AUTHORITY.—The authority of subsections (a), (b), and (c) of section 234 shall continue until [September 30, 2007] *September 30, 2011.*

* * * * * * *

[(e) There is hereby authorized to be transferred to the Corporation at its call, for the purposes specified in section 236, all fees and other revenues collected under predecessor guaranty authority from December 31, 1968, available as of the date of such transfer.]

[(f)] *(e)* There are authorized to be appropriated to the Corporation, to remain available until expended, such amounts as may be necessary from time to time to replenish or increase the noncredit account revolving fund, to discharge the liabilities under insurance, reinsurance, or guaranties issued by the Corporation or issued under predecessor guaranty authority, or to discharge obligations of the Corporation purchased by the Secretary of the Treasury pursuant to this subsection. However, no appropriations shall be made to augment the noncredit account revolving fund until the amount of funds in the noncredit account revolving fund is less than $25,000,000. Any appropriations to augment the noncredit account revolving fund shall then only be made either pursuant to specific authorization enacted after the date of enactment of the Overseas Private Investment Corporation Amendments Act of 1974, or to satisfy the full faith and credit provision of section 237(c). In order to discharge liabilities under investment insurance or reinsurance, the Corporation is authorized to issue from time to time for purchase by the Secretary of the Treasury its notes, debentures, bonds, or other obligations; but the aggregate amount of such obligations outstanding at any one time shall not exceed $100,000,000. Any such obligation shall be repaid to the Treasury within one year after the date of issue of such obligation. Any such obligation shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of any obligation authorized by this subsection. The Secretary of the Treasury shall purchase any obligation of the Corporation issued under this subsection, and for such purchase he may use as a public debt transaction the proceeds of the sale of any securities issued under the Second Liberty Bond Act after the date of enactment of the Overseas Private Investment Corporation Amendments Act of 1974. The purpose for which securities may be issued under such Bond Act shall include any such purchase.

(1) * * *

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SEC. 237. GENERAL PROVISIONS RELATING TO INSURANCE GUARANTY, AND FINANCING PROGRAM.—(a) * * *

* * * * * * *

(j) Each *insurance, reinsurance, and* guaranty contract executed by such officer or officers as may be designated by the Board shall be conclusively presumed to be issued in compliance with the requirements of this Act.

* * * * * * *

(m)(1) * * *

(A) * * *

* * * * * * *

The notification under the preceding sentence shall include a summary of the guidelines, standards, and restrictions referred to in subparagraphs (A) and (B), and may include any environmental impact statement, assessment, review, or study prepared with respect to the investment pursuant to section [239(g)] *239(f)*.

* * * * * * *

(n) PENALTIES FOR FRAUD.—[Whoever]

(1) IN GENERAL.—Whoever knowingly makes any false statement or report, or willfully overvalues any land, property, or security, for the purpose of influencing in any way the action of the Corporation with respect to any insurance, reinsurance, guarantee, loan, equity investment, or other activity of the Corporation under section 234 or any change or extension of any such insurance, reinsurance, guarantee, loan, equity investment, or activity, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

(2) DEFERRALS TO DEPARTMENT OF JUSTICE.—(A) The President of the Corporation shall refer to the Department of Justice for appropriate action information known to the Corporation concerning any substantial evidence of—

(i) a violation of this title;

(ii) a material breach of contract entered into with the Corporation by an eligible investor; or

(iii) a material false representation made by an investor to the Corporation.

(B) Subparagraph (A) does not apply if the President of the Corporation concludes that the matter described in clause (i), (ii), or (iii), as the case may be, of subparagraph (A)—

(i) is not evidence of a possible violation of criminal law; and

(ii) is not evidence that the Federal Government is entitled to civil remedy or to impose a civil penalty.

* * * * * * *

(p) COMMUNITY SUPPORT.—To the maximum extent practicable, the Corporation shall require the applicant for a project that is subject to section 231A(b) to obtain broad community support for the project.

(q) PROHIBITION ON ASSISTANCE FOR CERTAIN RAILWAY PROJECTS.—The Corporation may not provide insurance, reinsurance, a guaranty, financing, or other assistance to support the development or promotion of any railway connection or railway-related connection that does not traverse or connect with Armenia and does connect Azerbaijan and Turkey.

(r) INELIGIBLE PROJECTS.—

(1) IN GENERAL.—A project will not be eligible to receive support provided by the Corporation under this title if either of the following applies:

(A)(i) An applicant for insurance, reinsurance, financing, or other support for a project provided to the government

of a state sponsor of terrorism a loan, or an extension of credit, that remains outstanding.

(ii) For purposes of this subparagraph, the sale of goods, other than food or medicine, on any terms other than a cash basis shall be considered to be an extension of credit.

(B) An applicant for insurance, reinsurance, financing, or other support for a project has an investment commitment valued at $20,000,000 or more for the energy sector in a country that is a state sponsor of terrorism.

(2) DEFINITIONS.—In this subsection:

(A) CASH BASIS.—The term "cash basis" refers to a sale in which the purchaser of goods or services is required to make payment in full within 45 days after receiving the goods or services.

(B) ENERGY SECTOR.—The term "energy sector" refers to activities to develop or transport petroleum or natural gas resources.

(C) INVESTMENT COMMITMENT.—The term "investment commitment" means any of the following activities if such activity is undertaken pursuant to a commitment, or pursuant to the exercise of rights under a commitment, that was entered into with the government of a state sponsor of terrorism or a nongovernmental entity in a country that is a state sponsor of terrorism:

(i) The entry into a contract that includes responsibility for the development of petroleum resources located in a country that is a state sponsor of terrorism, or the entry into a contract providing for the general supervision and guarantee of another person's performance of such a contract.

(ii) The purchase of a share of ownership, including an equity interest, in that development.

(iii) The entry into a contract providing for the participation in royalties, earnings, or profits in that development, without regard to the form of the participation.

(D) STATE SPONSOR OF TERRORISM.—The term "state sponsor of terrorism" means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979, section 620A of the Foreign Assistance Act of 1961, section 40 of the Arms Export Control Act, or any other provision of law, to be a government that has repeatedly provided support for acts of international terrorism.

(3) CERTIFICATION.—

(A) BY APPLICANTS.—A person or entity applying for insurance, reinsurance, a guaranty, financing, or other assistance under this title may not receive such support unless its chief executive officer certifies to the Corporation, under penalty of perjury, that the person or entity and its majority-owned subsidiaries are not engaged in any activity described in subparagraph (A) or (B) of paragraph (1).

(B) BY ULTIMATE PARENT ENTITIES.—In the case of an applicant that is a majority-owned entity of another entity, in addition to the certification under subparagraph (A), the

chief executive officer of the ultimate parent entity of the applicant must certify, under penalty of perjury, that it and its majority-owned subsidiaries are not engaged in any activity described in subparagraph (A) or (B) of paragraph (1).

(C) APPLICATION TO STRAW MAN TRANSACTIONS.—In any case in which—

(i) an applicant for insurance, reinsurance, financing, or other assistance under this title is providing goods and services to a project,

(ii) more than 50 percent of such goods and services are acquired from an unaffiliated entity, and

(iii) the unaffiliated entity is receiving $20,000,000 or more, or sums greater than 50 percent of the amount of the assistance provided by the Corporation for the project (including contingent liability), for such goods or services,

then the chief executive officer of the unaffiliated entity must make a certification under subparagraph (A), and any ultimate parent entity must make a certification required by subparagraph (B).

(D) DILIGENT INQUIRY.—A certification required by subparagraph (A), (B), or (C) may be made to the best knowledge and belief of the certifying officer if that officer states that he or she has made diligent inquiry into the matter certified.

(E) EXCEPTION.—(i) A chief executive officer of an applicant or other entity may provide a certification required by subparagraph (A), (B), or (C) with respect to the activity of a majority-owned subsidiary or entity notwithstanding activity by such majority-owned subsidiary or entity that would cause a project to be ineligible for support under subparagraph (A) or (B) of paragraph (1) if such activity is carried out under a contract or other obligation of such majority-owned subsidiary or entity that was entered into or incurred before the acquisition of such majority-owned subsidiary or entity by the applicant or ultimate parent entity.

(ii) Clause (i) shall not apply if the terms of such contract or other obligation are expanded or extended after such acquisition.

(F) DEFINITION.—For purposes of this paragraph, a person is an ultimate parent of an entity if the person owns directly, or through majority ownership of other entities, greater than 50 percent of the equity of the entity.

(4) EXCEPTION.—The prohibition in paragraph (1) shall not—

(A) apply to a loan, extension of credit, or investment commitment by an applicant, or other entity covered by a certification under subparagraph (A), (B), or (C) of paragraph (3), in Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, or Abyei, Darfur, if the Corporation, with the concurrence of the Secretary of State, determines that such loan, extension of credit, or investment commitment will provide emergency relief, promote economic self-sufficiency, or implement a nonmilitary pro-

gram in support of a viable peace agreement in Sudan, including the Comprehensive Peace Agreement for Sudan and the Darfur Peace Agreement; or

(B) prohibit the Corporation from providing support for projects in Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, and Abyei, Darfur, if the Corporation, with the concurrence of the Secretary of State, determines that such projects will provide emergency relief, promote economic self-sufficiency, or implement a non-military program in support of a viable peace agreement in Sudan, including the Comprehensive Peace Agreement for Sudan and the Darfur Peace Agreement .

(5) PROSPECTIVE APPLICATION OF SUBSECTION.—This subsection shall not be applied to limit support by the Corporation under this title because an applicant, or other entity covered by a certification under subparagraph (A), (B), or (C) of paragraph (3) engaged in commercial activity specifically licensed by the Office of Foreign Assets Control of the Department of the Treasury.

(s) AVAILABILITY OF PROJECT INFORMATION.—Beginning 90 days after the date of the enactment of the Overseas Private Investment Corporation Reauthorization Act of 2007, the Corporation shall make public, and post on its Internet website, summaries of all new projects supported by the Corporation, and other relevant information, except that the Corporation shall not include any confidential business information in the summaries and information made available under this subsection.

(t) REVIEW OF METHODOLOGY.—Not later than 180 days after the date of the enactment of the Overseas Private Investment Corporation Reauthorization Act of 2007, the Corporation shall publish in the Federal Register and periodically revise, subject to a period of public comment, the detailed methodology, including relevant regulations, used to assess and monitor the impact of projects supported by the Corporation on the development and environment of, and international worker rights in, host countries, and on United States employment.

(u) PUBLIC NOTICE PRIOR TO PROJECT APPROVAL.—

(1) PUBLIC NOTICE.—The Board of Directors of the Corporation may not vote in favor of any action proposed to be taken by the Corporation on any Category A project until at least 60 days after the Corporation—

(A) makes available for public comment a summary of the project and relevant information about the project; and

(B) makes the summary and information described in paragraph (1) available to locally affected groups in the area of impact of the proposed project, and to host country nongovernmental organizations.

The Corporation shall not include any business confidential information in the summary and information made available under subparagraphs (A) and (B).

(2) PUBLISHED RESPONSE.—To the extent practicable, the Corporation shall publish responses to the comments received under paragraph (1) with respect to a Category A project and submit the responses to the Board not later than 7 days before

a vote is to be taken on any action proposed by the Corporation on the project.

(3) DEFINITIONS.—In this subsection, the term "Category A project" means any project or other activity for which the Corporation proposes to provide insurance, reinsurance, financing, or other support under this title and which is likely to have significant adverse environmental impacts.

(v) OFFICE OF ACCOUNTABILITY.—The Corporation shall maintain an Office of Accountability to provide problem-solving services for projects supported by the Corporation and to review the Corporation's compliance with its environmental, social, worker rights, human rights, and transparency policies and procedures, to the maximum extent practicable. The Office of Accountability shall operate in a manner that is fair, objective and transparent.

SEC. 238. DEFINITIONS.—As used in this title—

(a) * * *

* * * * * * *

(f) the term "predecessor guaranty authority" means prior guaranty authorities (other than housing guaranty authorities) repealed by the Foreign Assistance Act of 1969, section 202(b) and 413(b) of the Mutual Security Act of 1954, as amended, and section 111(b)(3) of the Economic Cooperation Act of 1948, as amended (exclusive of authority relating to informational media guaranties); **[**and**]**

(g) the term "local financial institution"—

(1) * * *

(2) does not include a branch, however organized, of a bank or other financial institution that is organized under the laws of a country in which the Corporation does not operate**[**.**]***; and*

(h) the term "international worker rights" means—

(1) internationally recognized worker rights, as defined in section 507(4) of the Trade Act of 1974 (19 U.S.C. 2467(4)); and

(2) the elimination of discrimination with respect to employment and occupation.

SEC. 239. GENERAL PROVISIONS AND POWERS.—(a) * * *

[(b) The President shall transfer to the Corporation, at such time as he may determine, all obligations, assets and related rights and responsibilities arising out of, or related to, predecessor programs and authorities similar to those provided for in section 234 (a), (b), and (d). Until such transfer, the agency heretofore responsible for such predecessor programs shall continue to administer such assets and obligations, and such programs and activities authorized under this title as may be determined by the President.**]**

[(c)**]** *(b)*(1) The Corporation shall be subject to the applicable provisions of chapter 91 of title 31, United States Code, except as otherwise provided in this title.

* * * * * * *

[(d)**]** *(c)* To carry out the purposes of this title, the Corporation is authorized to adopt and use a corporate seal, which shall be judicially noticed; to sue and be sued in its corporate name; to adopt, amend, and repeal bylaws governing the conduct of its business and the performance of the powers and duties granted to or im-

posed upon it by law; to acquire, hold or dispose of, upon such terms and conditions as the Corporation may determine, any property, real, personal, or mixed, tangible or intangible, or any interest therein; to invest funds derived from fees and other revenues in obligations of the United States and to use the proceeds therefrom, including earnings and profits, as it shall deem appropriate; to indemnify directors, officers, employees and agents of the Corporation for liabilities and expenses incurred in connection with their Corporation activities; to require bonds of officers, employees, and agents and pay the premiums therefor; notwithstanding any other provision of law, to represent itself or to contract for representation in all legal and arbitral proceedings; to enter into limited-term contracts with nationals of the United States for personal services to carry out activities in the United States and abroad under subsections (d) and (e) of section 234; to purchase, discount, rediscount, sell, and negotiate, with or without its endorsement or guaranty, and guarantee notes, participation certificates, and other evidence of indebtedness (provided that the Corporation shall not issue its own securities, except participation certificates for the purpose of carrying out section 231(c) or participation certificates as evidence of indebtedness held by the Corporation in connection with settlement of claims under section 237(i)); to make and carry out such contracts and agreements as are necessary and advisable in the conduct of its business; to exercise the priority of the Government of the United States in collecting debts from bankrupt, insolvent, or decedents' estates; to determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid, subject to provisions of law specifically applicable to Government corporations; to collect or compromise any obligations assigned to or held by the Corporation, including any legal or equitable rights accruing to the Corporation; and to take such actions as may be necessary or appropriate to carry out the powers herein or hereafter specifically conferred upon it.

[(e)**]** *(d)* The Inspector General of the Agency for International Development (1) may conduct reviews, investigations, and inspections of all phases of the Corporation's operations and activities and (2) shall conduct all security activities of the Corporation relating to personnel and the control of classified material. With respect to his responsibilities under this subsection, the Inspector General shall report to the Board. The agency primarily responsible for administering part I shall be reimbursed by the Corporation for all expenses incurred by the Inspector General in connection with his responsibilities under this subsection.

[(f)**]** *(e)* Except for the provisions of this title, no other provision of this or any other law shall be construed to prohibit the operation in Yugoslavia, Poland, Hungary, or any other East European country, or the People's Republic of China, or Pakistan of the programs authorized by this title, if the President determines that the operation of such program in such country is important to the national interest.

[(g)**]** *(f)* The requirements of section 117(c) of this Act relating to environmental impact statements and environmental assessments shall apply to any investment which the Corporation in-

sures, reinsures, guarantees, or finances under this title in connection with a project in a country.

[(h)] *(g)* In order to carry out the policy set forth in paragraph (1) of the second undesignated paragraph of section 231 of this Act, the Corporation shall prepare and maintain for each investment project it insures, finances, or reinsures, a development impact profile consisting of data appropriate to measure the projected and actual effects of such project on development. Criteria for evaluating projects shall be developed in consultation with the Agency for International Development. *In addition, the Corporation should consult with relevant stakeholders in developing such criteria.*

[(i)] *(h)* The Corporation shall take into account in the conduct of its programs in a country, in consultation with the Secretary of State, all available information about observance of and respect for human rights and fundamental freedoms*, including international worker rights,* in such country and the effect the operation of such programs will have on human rights and fundamental freedoms in such country. The provisions of section 116 of this Act shall apply to any insurance, reinsurance, guaranty, or loan issued by the Corporation for projects in a country, except that in addition to the exception (with respect to benefiting needy people) set forth in subsection (a) of such section, the Corporation may support a project if the national security interest so requires.

[(j)] *(i)* The Corporation, including its franchise, capital, reserves, surplus, advances, intangible property, and income, shall be exempt from all taxation at any time imposed by the United States, by any territory, dependency, or possession of the United States, or by any State, the District of Columbia, or any county, municipality, or local taxing authority.

[(k)] *(j)* The Corporation shall publish, and make available to applicants for insurance, reinsurance, guarantees, financing, or other assistance made available by the Corporation under this title, the policy guidelines of the Corporation relating to its programs.

(k) TRANSPARENCY AND ACCOUNTABILITY OF INVESTMENT FUNDS.—

(1) COMPETITIVE SELECTION OF INVESTMENT FUND MANAGEMENT.—With respect to any investment fund that the Corporation creates on or after the date of the enactment of the Overseas Private Investment Corporation Reauthorization Act of 2007, the Corporation may select persons to manage the fund only by contract using full and open competitive procedures.

(2) CRITERIA FOR SELECTION.—In assessing proposals for investment fund management proposals, the Corporation shall consider, in addition to other factors, the following:

(A) The prospective fund management's experience, depth, and cohesiveness.

(B) The prospective fund management's track record in investing risk capital in emerging markets.

(C) The prospective fund management's experience, management record, and monitoring capabilities in its target countries, including details of local presence (directly or through local alliances).

(D) The prospective fund management's experience as a fiduciary in managing institutional capital, meeting reporting requirements, and administration.

(E) The prospective fund management's record in avoiding investments in companies that would be disqualified under section 237(r).

(3) ANNUAL REPORT.—The Corporation shall include in each annual report under section 240A an analysis of the investment fund portfolio of the Corporation, including the following:

(A) FUND PERFORMANCE.—An analysis of the aggregate financial performance of the investment fund portfolio grouped by region and maturity.

(B) STATUS OF LOAN GUARANTIES.—The amount of guaranties committed by the Corporation to support investment funds, including the percentage of such amount that has been disbursed to the investment funds.

(C) RISK RATINGS.—The definition of risk ratings, and the current aggregate risk ratings for the investment fund portfolio, including the number of investment funds in each of the Corporation's rating categories.

(D) COMPETITIVE SELECTION OF INVESTMENT FUND MANAGEMENT.—The number of proposals received and evaluated for each newly established investment fund.

(l) OPERATIONS IN IRAQ.—Notwithstanding subsections (a) and (b) of section 237, the Corporation is authorized to undertake in Iraq any program authorized by this title.

(m) CONSISTENCY WITH OTHER LAW.—Section 620L of this Act shall apply to any insurance, reinsurance, guaranty, or other financing issued by the Corporation for projects in the West Bank and Gaza to the same extent as such section applies to other assistance under this Act.

(n) LIMITATION ON ASSISTANCE TO GAZA AND THE WEST BANK.—The Corporation may not provide insurance, reinsurance, a guaranty, financing, or other assistance to support a project in any part of Gaza or the West Bank unless the Secretary of State determines that the location for the project is not under the effective control of Hamas or any other foreign terrorist organization designated under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

(o) CONGRESSIONAL NOTIFICATION OF INCREASE IN MAXIMUM CONTINGENT LIABILITY.—The Corporation shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate not later than 15 days after the date on which the Corporation's maximum contingent liability outstanding at any one time pursuant to insurance issued under section 234(a), and the amount of financing issued under sections 234(b) and (c), exceeds the previous fiscal year's maximum contingent liability by 25 percent.

SEC. 240. SMALL BUSINESS DEVELOPMENT.—(a) * * *

* * * * * * *

(c) RESOURCES DEDICATED TO SMALL BUSINESSES, COOPERATIVES, AND OTHER SMALL UNITED STATES INVESTORS.—The Corporation shall ensure that adequate personnel and resources, including senior officers, are dedicated to assist United States small businesses, cooperatives, and other small United States investors in obtaining insurance, reinsurance, financing, and other support under this title. The Corporation shall include, in each annual report under section 240A, the following information with respect to the period covered by the report:

(1) A description of such personnel and resources.

(2) The number of small businesses, cooperatives, and other small United States investors that received such insurance, reinsurance, financing, and other support, and the dollar value of such insurance, reinsurance, financing and other support.

(3) A description of the projects for which such insurance, reinsurance, financing, and other support was provided.

SEC. 240A. REPORTS TO THE CONGRESS.—After (a) the end of each fiscal year, the Corporation shall submit to the Congress a complete and detailed report of its operations during such fiscal year. Such report shall include—

(1) an assessment, based upon the development impact profiles required by section [239(h)] *239(g)*, of the economic and social development impact and benefits of the projects with respect to which such profiles are prepared, and of the extent to which the operations of Corporation complement or are compatible with the development assistance programs of the United States and other donors; and

(2) a description of any project for which the Corporation—

(A) refused to provide any insurance, reinsurance, guaranty, financing, or other financial support, on account of violations of human rights referred to in section [239(i)] *239(h)*; or

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SECTION 209 OF THE ADMIRAL JAMES W. NANCE AND MEG DONOVAN FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 2000 AND 2001

SEC. 209. CONTINUATION OF REPORTING REQUIREMENTS.

(a) * * *

* * * * * * *

(e) CONTINUATION OF REPORTS TERMINATED BY THE FEDERAL REPORTS ELIMINATION AND SUNSET ACT OF 1995.—Section 3003(a)(1) of the Federal Reports Elimination and Sunset Act of 1995 (Public Law 104–66; 31 U.S.C. 1113 note) does not apply to any report required to be submitted under any of the following provisions of law:

(1) * * *

* * * * * * *

(16) Section [239(c)] *239(b)* of the Foreign Assistance Act of 1961 (Public Law 87–195; 22 U.S.C. [2199(c)] *2199(b)*) (relating to OPIC audit report).

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